104TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 104–350

BALANCED BUDGET ACT OF 1995

CONFERENCE REPORT

TO ACCOMPANY

H.R. 2491

NOVEMBER 16 (legislative day of NOVEMBER 15), 1995.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
20–873 WASHINGTON : 1995

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Mr. KASICH, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2491]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2491), to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996, 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 "Balanced Budget Act of 1995".

SEC. 2. TABLE OF TITLES.

This Act is organized into titles as follows:

Title I—Agriculture and Related Provisions
Title II—Banking, Housing, and Related Provisions
Title III—Communication and Spectrum Allocation Provisions
Title IV—Education and Related Provisions
Title V—Energy and Natural Resources Provisions
Title VI—Federal Retirement and Related Provisions
Title VII—Medicaid
Title VIII—Medicare
Title IX—Transportation and Related Provisions
Title X—Veterans and Related Provisions
Title XI—Revenues
Title XII—Teaching hospitals and graduate medical education; asset sales; welfare; and other provisions

TITLE I—AGRICULTURE AND RELATED PROVISIONS

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1995".

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

Subtitle A—Agricultural Market Transition Program

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Agricultural Market Transition Act".

SEC. 1102. DEFINITIONS.

In this subtitle:

(1) CONSIDERED PLANTED.—The term "considered planted" means acreage that is considered planted under title V of the Agricultural Act of 1949 (7 U.S.C. 1461 et seq.) (as in effect prior to the amendment made by section 1109(b)(2)).

(2) CONTRACT.—The term "contract" means a production flexibility contract entered into under section 1103.

(3) CONTRACT ACREAGE.—The term "contract acreage" means 1 or more crop acreage bases established for contract commodities under title V of the Agricultural Act of 1949 (as in effect prior to the amendment made by section 1109(b)(2)). If a crop acreage base was not enrolled in an annual program for the 1995 crop in order to increase crop acreage base, the contract acreage for the 1996 crop shall reflect the increased base

acreage that would have been established under title V of the Act (as so in effect).

(4) CONTRACT COMMODITY.—The term 'contract commodity' means wheat, corn, grain sorghum, barley, oats, upland cotton, and rice.

(5) CONTRACT PAYMENT.—The term "contract payment" means a payment made under section 1103 pursuant to a contract.

(6) FARM PROGRAM PAYMENT YIELD.—The term "farm program payment yield" means the farm program payment yield established for the 1995 crop of a contract commodity under title V of the Agricultural Act of 1949 (as in effect prior to the amendment made by section 1109(b)(2)).

(7) LOAN COMMODITY.—The term 'loan commodity' means each contract commodity, extra long staple cotton, and oilseeds.

(8) OILSEED.—The term "oilseed" means a crop of soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, or, if designated by the Secretary, other oilseeds.

(9) PROGRAM.—The term "program" means the agricultural market transition program established under this subtitle.

(10) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 1103. PRODUCTION FLEXIBILITY CONTRACTS.

(a) CONTRACTS AUTHORIZED.—

(1) OFFER AND TERMS.—Beginning as soon as practicable after the date of the enactment of this subtitle, the Secretary shall offer to enter into a contract with an eligible owner or operator described in paragraph (2) on a farm containing eligible farmland. Under the terms of a contract, the owner or operator shall agree, in exchange for annual contract payments, to comply with—

(A) the conservation plan for the farm prepared in accordance with section 1212 of the Food Security Act of 1985 (16 U.S.C. 3812);

(B) wetland protection requirements applicable to the farm under subtitle C of title XII of the Act (16 U.S.C. 3821 et seq.); and

(C) the planting flexibility requirements of subsection (j).

(2) ELIGIBLE OWNERS AND OPERATORS DESCRIBED.—The following persons shall be considered to be an owner or operator eligible to enter into a contract:

(A) An owner of eligible farmland who assumes all of the risk of producing a crop.

(B) An owner of eligible farmland who shares in the risk of producing a crop.

(C) An operator of eligible farmland with a share-rent lease of the eligible farmland, regardless of the length of the lease, if the owner enters into the same contract.

(D) An operator of eligible farmland who cash rents the eligible farmland under a lease expiring on or after September 30, 2002, in which case the consent of the owner is not required.

(E) An operator of eligible farmland who cash rents the eligible farmland under a lease expiring before September 30, 2002, if the owner consents to the contract.

(F) An owner of eligible farmland who cash rents the eligible farmland and the lease term expires before September 30, 2002, but only if the actual operator of the farm declines to enter into a contract. In the case of an owner covered by this subparagraph, contract payments shall not begin under a contract until the fiscal year following the fiscal year in which the lease held by the nonparticipating operator expires.

(G) An owner or operator described in a preceding subparagraph regardless of whether the owner or operator purchased catastrophic risk protection for a fall-planted 1996 crop under section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)).

(3) TENANTS AND SHARECROPPERS.—In carrying out this section, the Secretary shall provide adequate safeguards to protect the interests of operators who are tenants and sharecroppers.

(b) ELEMENTS.—

(1) TIME FOR CONTRACTING.—

(A) DEADLINE.—Except as provided in subparagraph (B), the Secretary may not enter into a contract after April 15, 1996.

(B) CONSERVATION RESERVE LANDS.—

(i) IN GENERAL.—At the beginning of each fiscal year, the Secretary shall allow an eligible owner or operator on a farm covered by a conservation reserve contract entered into under section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) that terminates after the date specified in subparagraph (A) to enter into or expand a production flexibility contract to cover the contract acreage of the farm that was subject to the former conservation reserve contract.

(ii) AMOUNT.—Contract payments made for contract acreage under this subparagraph shall be made at the rate and amount applicable to the annual contract payment level for the applicable crop.

(2) DURATION OF CONTRACT.—

(A) BEGINNING DATE.—A contract shall begin with—

(i) the 1996 crop of a contract commodity; or

(ii) in the case of acreage that was subject to a conservation reserve contract described in paragraph (1)(B), the date the production flexibility contract was entered into or expanded to cover the acreage.

(B) ENDING DATE.—A contract shall extend through the 2002 crop.

(3) ESTIMATION OF CONTRACT PAYMENTS.—At the time the Secretary enters into a contract, the Secretary shall provide an estimate of the minimum contract payments anticipated to be made during at least the first fiscal year for which contract payments will be made.

(c) ELIGIBLE FARMLAND DESCRIBED.—Land shall be considered to be farmland eligible for coverage under a contract only if the land has contract acreage attributable to the land and—

(1) for at least 1 of the 1991 through 1995 crops, at least a portion of the land was enrolled in the acreage reduction program authorized for a crop of a contract commodity under section 101B, 103B, 105B, or 107B of the Agricultural Act of 1949 (as in effect prior to the amendment made by section 1109(b)(2)) or was considered planted;

(2) was subject to a conservation reserve contract under section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) whose term expired, or was voluntarily terminated, on or after January 1, 1995; or

(3) is released from coverage under a conservation reserve contract by the Secretary during the period beginning on January 1, 1995, and ending on the date specified in subsection (b)(1)(A).

(d) TIME FOR PAYMENT.—

(1) IN GENERAL.—An annual contract payment shall be made not later than September 30 of each of fiscal years 1996 through 2002.

(2) ADVANCE PAYMENTS.—

(A) FISCAL YEAR 1996.—At the option of the owner or operator, 50 percent of the contract payment for fiscal year 1996 shall be made not later than 60 days after the date on which the owner or operator enters into a contract.

(B) SUBSEQUENT FISCAL YEARS.—At the option of the owner or operator for fiscal year 1997 and each subsequent fiscal year, 50 percent of the annual contract payment shall be made on December 15.

(e) AMOUNTS AVAILABLE FOR CONTRACT PAYMENTS FOR EACH FISCAL YEAR.—

(1) IN GENERAL.—The Secretary shall expend on a fiscal year basis the following amounts to satisfy the obligations of the Secretary under all contracts:

(A) For fiscal year 1996, $5,570,000,000.

(B) For fiscal year 1997, $5,385,000,000.

(C) For fiscal year 1998, $5,800,000,000.

(D) For fiscal year 1999, $5,603,000,000.

(E) For fiscal year 2000, $5,130,000,000.

(F) For fiscal year 2001, $4,130,000,000.

(G) For fiscal year 2002, $4,008,000,000.

(2) ALLOCATION.—The amount made available for a fiscal year under paragraph (1) shall be allocated as follows:

(A) For wheat, 26.26 percent.

(B) For corn, 46.22 percent.

(C) For grain sorghum, 5.11 percent.

(D) For barley, 2.16 percent.

(E) For oats, 0.15 percent.

(F) For upland cotton, 11.63 percent.

(G) For rice, 8.47 percent.

(3) ADJUSTMENT.—The Secretary shall adjust the amounts allocated for each contract commodity under paragraph (2) for a particular fiscal year by—

(A) subtracting an amount equal to the amount, if any, necessary to satisfy payment requirements under sections 101B, 103B, 105B, and 107B of the Agricultural Act of 1949 (as in effect prior to the amendment made by section 1109(b)(2)) for the 1994 and 1995 crops of the commodity;

(B) adding an amount equal to the sum of all producer repayments of deficiency payments received under section 114(a)(2) of the Act (as so in effect) for the commodity;

(C) adding an amount equal to the sum of all contract payments withheld by the Secretary, at the request of producers, during the preceding fiscal year as an offset against producer repayments of deficiency payments otherwise required under section 114(a)(2) of the Act (as so in effect) for the commodity; and

(D) adding an amount equal to the sum of all refunds of contract payments received during the preceding fiscal year under subsection (h) for the commodity.

(f) DETERMINATION OF CONTRACT PAYMENTS.—

(1) INDIVIDUAL PAYMENT QUANTITY OF CONTRACT COMMODITIES.—For each contract, the payment quantity of a contract commodity for each fiscal year shall be equal to the product of—

(A) 85 percent of the contract acreage; and

(B) the farm program payment yield.

(2) ANNUAL PAYMENT QUANTITY OF CONTRACT COMMODITIES.—The payment quantity of each contract commodity covered by all contracts for each fiscal year shall equal the sum of the amounts calculated under paragraph (1) for each individual contract.

(3) ANNUAL PAYMENT RATE.—The payment rate for a contract commodity for each fiscal year shall be equal to—

(A) the amount made available under subsection (e) for the contract commodity for the fiscal year; divided by

(B) the amount determined under paragraph (2) for the fiscal year.

(4) ANNUAL PAYMENT AMOUNT.—The amount to be paid under a contract in effect for each fiscal year with respect to a contract commodity shall be equal to the product of—

(A) the payment quantity determined under paragraph (1) with respect to the contract; and

(B) the payment rate in effect under paragraph (3).

(5) ASSIGNMENT OF CONTRACT PAYMENTS.—The provisions of section 8(g) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(g)) (relating to assignment of payments) shall apply to contract payments under this subsection. The owner or operator making the assignment, or the assignee, shall provide the Secretary with notice, in such manner as the Secretary may require in the contract, of any assignment made under this paragraph.

(6) SHARING OF CONTRACT PAYMENTS.—The Secretary shall provide for the sharing of contract payments among the owners and operators subject to the contract on a fair and equitable basis.

(g) PAYMENT LIMITATION.—The total amount of contract payments made to a person under a contract during any fiscal year may not exceed the payment limitations established under section 1105.

(h) EFFECT OF VIOLATION.—

(1) TERMINATION OF CONTRACT.—Except as provided in paragraph (2), if an owner or operator subject to a contract violates the conservation plan for the farm containing eligible farmland under the contract, wetland protection requirements applicable to the farm, or the planting flexibility requirements of subsection (j), the Secretary shall terminate the contract with respect to the owner or operator. On the termination, the owner or operator shall forfeit all rights to receive future contract payments and shall refund to the Secretary all contract payments received by the owner or operator during the period of the violation, together with interest on the contract payments as determined by the Secretary.

(2) REFUND OR ADJUSTMENT.—If the Secretary determines that a violation does not warrant termination of the contract under paragraph (1), the Secretary may require the owner or operator subject to the contract—

(A) to refund to the Secretary that part of the contract payments received by the owner or operator during the period of the violation, together with interest on the contract payments as determined by the Secretary; or

(B) to accept a reduction in the amount of future contract payments that is proportionate to the severity of the violation, as determined by the Secretary.

(3) FORECLOSURE.—An owner or operator subject to a contract may not be required to make repayments to the Secretary of amounts received under the contract if the contract acreage has been foreclosed on and the Secretary determines that forgiving the repayments is appropriate in order to provide fair and equitable treatment. This paragraph shall not void the responsibilities of such an owner or operator under the contract if the owner or operator continues or resumes operation, or control, of the contract acreage. On the resumption of operation or control over the contract acreage by the owner or operator, the provisions of the contract in effect on the date of the foreclosure shall apply.

(4) REVIEW.—A determination of the Secretary under this subsection shall be considered to be an adverse decision for purposes of the availability of administrative review of the determination.

(i) TRANSFER OF INTEREST IN LANDS SUBJECT TO CONTRACT.—

(1) EFFECT OF TRANSFER.—Except as provided in paragraph (2), the transfer by an owner or operator subject to a contract of the right and interest of the owner or operator in the contract acreage shall result in the termination of the contract with respect to the acreage, effective on the date of the transfer, unless the transferee of the acreage agrees with the Secretary to assume all obligations of the contract. At the request of the transferee, the Secretary may modify the contract if the modi-

fications are consistent with the objectives of this section as determined by the Secretary.

(2) EXCEPTION.—If an owner or operator who is entitled to a contract payment dies, becomes incompetent, or is otherwise unable to receive the contract payment, the Secretary shall make the payment, in accordance with regulations prescribed by the Secretary.

(j) PLANTING FLEXIBILITY.—

(1) PERMITTED CROPS.—Subject to paragraph (2)(A), any commodity or crop may be planted on contract acreage.

(2) LIMITATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the planting of any fruit or vegetable, and unlimited haying and grazing, shall be permitted on not more than 15 percent of the contract acreage.

(B) EXCEPTION.—Subparagraph (A) shall not apply to the planting of contract commodities, lentils, mung beans, and dry peas on contract acreage.

(3) ALFALFA.—The planting of alfalfa on contract acreage is unlimited, except that the quantity of acreage on which the contract payment of the owner or operator would otherwise be based shall be reduced for each acre planted to alfalfa in excess of the limitation in effect under paragraph (2)(A) for the contract.

(4) HAYING AND GRAZING.—Subject to paragraphs (2) and (3), haying and grazing of contract acreage 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. The 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 the contract acreage.

SEC. 1104. NONRECOURSE MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS.

(a) AVAILABILITY OF NONRECOURSE LOANS.—

(1) AVAILABILITY.—For each of the 1996 through 2002 crops of each loan commodity, the Secretary shall make available to producers on a farm nonrecourse marketing assistance loans for loan commodities produced on the farm. The loans shall be made under terms and conditions that are prescribed by the Secretary and at the loan rate established under subsection (b) for the loan commodity.

(2) ELIGIBLE PRODUCTION.—The following production shall be eligible for a marketing assistance loan under this section:

(A) In the case of a marketing assistance loan for a contract commodity, any production by a producer who has entered into a production flexibility contract.

(B) In the case of a marketing assistance loan for extra long staple cotton and oilseeds, any production.

(b) LOAN RATES.—

(1) WHEAT.—

(A) LOAN RATE.—Subject to subparagraph (B), the loan rate for a marketing assistance loan for wheat shall be—

(i) not less than 85 percent of the simple average price received by producers of wheat, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of wheat, excluding the year in which the average price was the highest and the year in which the average price was the lowest in the period; but

(ii) not more than $2.58 per bushel.

(B) STOCKS TO USE RATIO ADJUSTMENT.—If the Secretary estimates for any marketing year that the ratio of ending stocks of wheat to total use for the marketing year will be—

(i) equal to or greater than 30 percent, the Secretary may reduce the loan rate for wheat for the corresponding crop by an amount not to exceed 10 percent in any year;

(ii) less than 30 percent but not less than 15 percent, the Secretary may reduce the loan rate for wheat for the corresponding crop by an amount not to exceed 5 percent in any year; or

(iii) less than 15 percent, the Secretary may not reduce the loan rate for wheat for the corresponding crop.

(C) NO EFFECT ON FUTURE YEARS.—Any reduction in the loan rate for wheat under subparagraph (B) shall not be considered in determining the loan rate for wheat for subsequent years.

(2) FEED GRAINS.—

(A) LOAN RATE FOR CORN.—Subject to subparagraph (B), the loan rate for a marketing assistance loan for corn shall be—

(i) not less than 85 percent of the simple average price received by producers of corn, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of corn, excluding the year in which the average price was the highest and the year in which the average price was the lowest in the period; but

(ii) not more than $1.89 per bushel.

(B) STOCKS TO USE RATIO ADJUSTMENT.—If the Secretary estimates for any marketing year that the ratio of ending stocks of corn to total use for the marketing year will be—

(i) equal to or greater than 25 percent, the Secretary may reduce the loan rate for corn for the corresponding crop by an amount not to exceed 10 percent in any year;

(ii) less than 25 percent but not less than 12.5 percent, the Secretary may reduce the loan rate for corn for the corresponding crop by an amount not to exceed 5 percent in any year; or

(iii) less than 12.5 percent the Secretary may not reduce the loan rate for corn for the corresponding crop.

(C) NO EFFECT ON FUTURE YEARS.—Any reduction in the loan rate for corn under subparagraph (B) shall not be considered in determining the loan rate for corn for subsequent years.

(D) OTHER FEED GRAINS.—The loan rate for a marketing assistance loan for grain sorghum, barley, and oats, respectively, shall be established at such level as the Secretary determines is fair and reasonable in relation to the rate that loans are made available for corn, taking into consideration the feeding value of the commodity in relation to corn.

(3) UPLAND COTTON.—

(A) LOAN RATE.—Subject to subparagraph (B), the loan rate for a marketing assistance loan for upland cotton shall be established by the Secretary at such loan rate, per pound, as will reflect for the base quality of upland cotton, as determined by the Secretary, at average locations in the United States a rate that is not less than the smaller of—

(i) 85 percent of the average price (weighted by market and month) of the base quality of cotton as quoted in the designated United States spot markets during 3 years of the 5-year period ending July 31 in the year in which the loan rate is announced, excluding the year in which the average price was the highest and the year in which the average price was the lowest in the period; or

(ii) 90 percent of the average, for the 15-week period beginning July 1 of the year in which the loan rate is announced, of the 5 lowest-priced growths of the growths quoted for Middling $1\frac{3}{32}$-inch cotton C.I.F. Northern Europe (adjusted downward by the average difference during the period April 15 through October 15 of the year in which the loan is announced between the average Northern European price quotation of such quality of cotton and the market quotations in the designated United States spot markets for the base quality of upland cotton), as determined by the Secretary.

(B) LIMITATIONS.—The loan rate for a marketing assistance loan for upland cotton shall not be less than $0.50 per pound or more than $0.5192 per pound.

(4) EXTRA LONG STAPLE COTTON.—The loan rate for a marketing assistance loan for extra long staple cotton shall be—

(A) not less than 85 percent of the simple average price received by producers of extra long staple cotton, as determined by the Secretary, during 3 years of the 5 previous marketing years, excluding the year in which the average price was the highest and the year in which the average price was the lowest in the period; but

(B) not more than $0.7965 per pound.

(5) RICE.—The loan rate for a marketing assistance loan for rice shall be $6.50 per hundredweight.

(6) OILSEEDS.—

(A) SOYBEANS.—The loan rate for a marketing assistance loan for soybeans shall be $4.92 per bushel.

(B) SUNFLOWER SEED, CANOLA, RAPESEED, SAFFLOWER, MUSTARD SEED, AND FLAXSEED.—The loan rates for a marketing assistance loan for sunflower seed, canola, rapeseed, safflower, mustard seed, and flaxseed, individually, shall be $0.087 per pound.

(C) OTHER OILSEEDS.—The loan rates for a marketing assistance loan for other oilseeds shall be established at such level as the Secretary determines is fair and reasonable in relation to the loan rate available for soybeans, except in no event shall the rate for the oilseeds (other than cottonseed) be less than the rate established for soybeans on a per-pound basis for the same crop.

(c) TERM OF LOAN.—In the case of each loan commodity (other than upland cotton or extra long staple cotton), a marketing assistance loan under subsection (a) shall have a term of 9 months beginning on the first day of the first month after the month in which the loan is made. A marketing assistance loan for upland cotton or extra long staple cotton shall have a term of 10 months. The Secretary may not extend the term of a marketing assistance loan for any loan commodity.

(d) REPAYMENT.—

(1) REPAYMENT RATES GENERALLY.—The Secretary shall permit producers to repay a marketing assistance loan under subsection (a) for a loan commodity (other than extra long staple cotton) at a level that is the lesser of—

(A) the loan rate established for the commodity under subsection (b); or

(B) the prevailing world market price for the commodity (adjusted to United States quality and location), as determined by the Secretary.

(2) REPAYMENT RATES FOR EXTRA LONG STAPLE COTTON.—Repayment of a marketing assistance loan for extra long staple cotton shall be at the loan rate established for the commodity under subsection (b).

(3) PREVAILING WORLD MARKET PRICE.—For purposes of paragraph (1)(B) and subsection (f), the Secretary shall prescribe by regulation—

(A) a formula to determine the prevailing world market price for each loan commodity, adjusted to United States quality and location; and

(B) a mechanism by which the Secretary shall announce periodically the prevailing world market price for each loan commodity.

(4) ADJUSTMENT OF PREVAILING WORLD MARKET PRICE FOR UPLAND COTTON.—

(A) IN GENERAL.—During the period ending July 31, 2003, the prevailing world market price for upland cotton (adjusted to United States quality and location) established under paragraph (3) shall be further adjusted if—

(i) the adjusted prevailing world market price is less than 115 percent of the loan rate for upland cotton established under subsection (b), as determined by the Secretary; and

(ii) the Friday through Thursday average price quotation for the lowest-priced United States growth as quoted for Middling (M) 1³⁄₃₂-inch cotton delivered C.I.F. Northern Europe is greater than the Friday through Thursday average price of the 5 lowest-priced growths of upland cotton, as quoted for Middling (M) 1³⁄₃₂-inch cotton, delivered C.I.F. Northern Europe (referred to in this subsection as the "Northern Europe price").

(B) FURTHER ADJUSTMENT.—Except as provided in subparagraph (C), the adjusted prevailing world market price for upland cotton shall be further adjusted on the basis of some or all of the following data, as available:

(i) The United States share of world exports.

(ii) The current level of cotton export sales and cotton export shipments.

(iii) Other data determined by the Secretary to be relevant in establishing an accurate prevailing world market price for upland cotton (adjusted to United States quality and location).

(C) LIMITATION ON FURTHER ADJUSTMENT.—The adjustment under subparagraph (B) may not exceed the difference between—

(i) the Friday through Thursday average price for the lowest-priced United States growth as quoted for Middling 1³⁄₃₂-inch cotton delivered C.I.F. Northern Europe; and

(ii) the Northern Europe price.

(e) LOAN DEFICIENCY PAYMENTS.—

(1) AVAILABILITY.—Except as provided in paragraph (4), the Secretary may make loan deficiency payments available to producers who, although eligible to obtain a marketing assistance loan under subsection (a) with respect to a loan commodity, agree to forgo obtaining the loan for the commodity in return for payments under this subsection.

(2) COMPUTATION.—A loan deficiency payment under this subsection shall be computed by multiplying—

(A) the loan payment rate determined under paragraph (3) for the loan commodity; by

(B) the quantity of the loan commodity that the producers on a farm are eligible to place under loan but for which the producers forgo obtaining the loan in return for payments under this subsection.

(3) LOAN PAYMENT RATE.—For purposes of this subsection, the loan payment rate shall be the amount by which—

(A) the loan rate established under subsection (b) for the loan commodity; exceeds

(B) the rate at which a loan for the commodity may be repaid under subsection (d).

(4) EXCEPTION FOR EXTRA LONG STAPLE COTTON.—This subsection shall not apply with respect to extra long staple cotton.

(f) SPECIAL MARKETING LOAN PROVISIONS FOR UPLAND COTTON.—

(1) FIRST HANDLER MARKETING CERTIFICATES.—

(A) IN GENERAL.—During the period ending on July 31, 2003, if the repayment rates provided in subsection (d) for upland cotton or the availability of loan deficiency payments for upland cotton under subsection (e) fails to make United States upland cotton fully competitive in world markets and the prevailing world market price of upland cotton (adjusted to United States quality and location) is below the current loan repayment rate for upland cotton, to make United States upland cotton competitive in world markets and to maintain and expand domestic consumption and exports of upland cotton produced in the United States, the Secretary shall provide for the issuance of marketing certificates or cash payments in accordance with this paragraph.

(B) PAYMENTS.—The Commodity Credit Corporation, under such regulations as the Secretary may prescribe, shall make payments, through the issuance of marketing certificates or cash payments, to first handlers of upland cotton (persons regularly engaged in buying or selling upland cotton) who have entered into an agreement with the Commodity Credit Corporation to participate in the program established under this paragraph. The payments shall be made in such amounts and subject to such terms and conditions as the Secretary determines will make upland cotton produced in the United States available at competitive prices, consistent with the purposes of this paragraph.

(C) VALUE.—The value of each certificate or cash payment issued under subparagraph (B) shall be based on the difference between—

(i) the loan repayment rate for upland cotton; and

(ii) the prevailing world market price of upland cotton (adjusted to United States quality and location), as determined by the Secretary.

(D) REDEMPTION, MARKETING, OR EXCHANGE.—The Commodity Credit Corporation, under regulations prescribed by the Secretary, may assist any person receiving marketing certificates under this paragraph in the redemption of certificates for cash, or marketing or exchange of the certificates for agricultural commodities or products owned by the Commodity Credit Corporation, at such times, in such manner, and at such price levels as the Secretary determines will best effectuate the purposes of the program established under this paragraph. Any price restrictions that may otherwise apply to the disposition of agricultural commodities by the Commodity Credit Corporation shall not apply to the redemption of certificates under this paragraph.

(E) DESIGNATION OF COMMODITIES AND PRODUCTS; CHARGES.—Insofar as practicable, the Secretary shall permit owners of certificates to designate the commodities and products, including storage sites, the owners would prefer to receive in exchange for certificates. If any certificate is

not presented for redemption, marketing, or exchange within a reasonable number of days after the issuance of the certificate (as determined by the Secretary), reasonable costs of storage and other carrying charges, as determined by the Secretary, shall be deducted from the value of the certificate for the period beginning after the reasonable number of days and ending with the date of the presentation of the certificate to the Commodity Credit Corporation.

(F) DISPLACEMENT.—The Secretary shall take such measures as may be necessary to prevent the marketing or exchange of agricultural commodities and products for certificates under this subsection from adversely affecting the income of producers of the commodities or products.

(G) TRANSFERS.—Under regulations prescribed by the Secretary, certificates issued to cotton handlers under this paragraph may be transferred to other handlers and persons approved by the Secretary.

(2) COTTON USER MARKETING CERTIFICATES.—

(A) ISSUANCE.—Subject to subparagraph (D), during the period ending July 31, 2003, the Secretary shall issue marketing certificates or cash payments to domestic users and exporters for documented purchases by domestic users and sales for export by exporters made in the week following a consecutive 4-week period in which—

(i) the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) 1$\frac{3}{32}$-inch cotton, delivered C.I.F. Northern Europe exceeds the Northern Europe price by more than 1.25 cents per pound; and

(ii) the prevailing world market price for upland cotton (adjusted to United States quality and location) does not exceed 130 percent of the loan rate for upland cotton established under subsection (b).

(B) VALUE OF CERTIFICATES OR PAYMENTS.—The value of the marketing certificates or cash payments shall be based on the amount of the difference (reduced by 1.25 cents per pound) in the prices during the 4th week of the consecutive 4-week period multiplied by the quantity of upland cotton included in the documented sales.

(C) ADMINISTRATION.—Subparagraphs (D) through (G) of paragraph (1) shall apply to marketing certificates issued under this paragraph. Any such certificates may be transferred to other persons in accordance with regulations issued by the Secretary.

(D) EXCEPTION.—The Secretary shall not issue marketing certificates or cash payments under subparagraph (A) if, for the immediately preceding consecutive 10-week period, the Friday through Thursday average price quotation for the lowest priced United States growth, as quoted for Middling (M) 1$\frac{3}{32}$-inch cotton, delivered C.I.F. Northern Europe, adjusted for the value of any certificate issued under this paragraph, exceeds the Northern Europe price by more than 1.25 cents per pound.

(E) LIMITATION ON EXPENDITURES.—Total expenditures under this paragraph shall not exceed $701,000,000 during fiscal years 1996 through 2002.

(3) SPECIAL IMPORT QUOTA.—

(A) ESTABLISHMENT.—The President shall carry out an import quota program that provides that, during the period ending July 31, 2003, whenever the Secretary determines and announces that for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) 1 3/32-inch cotton, delivered C.I.F. Northern Europe, adjusted for the value of any certificates issued under paragraph (2), exceeds the Northern Europe price by more than 1.25 cents per pound, there shall immediately be in effect a special import quota.

(B) QUANTITY.—The quota shall be equal to 1 week's consumption of upland cotton by domestic mills at the seasonally adjusted average rate of the most recent 3 months for which data are available.

(C) APPLICATION.—The quota shall apply to upland cotton purchased not later than 90 days after the date of the Secretary's announcement under subparagraph (A) and entered into the United States not later than 180 days after the date.

(D) OVERLAP.—A special quota period may be established that overlaps any existing quota period if required by subparagraph (A), except that a special quota period may not be established under this paragraph if a quota period has been established under subsection (g).

(E) PREFERENTIAL TARIFF TREATMENT.—The quantity under a special import quota shall be considered to be an in-quota quantity for purposes of—

(i) section 213(d) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(d));

(ii) section 204 of the Andean Trade Preference Act (19 U.S.C. 3203);

(iii) section 503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d)); and

(iv) General Note 3(a)(iv) to the Harmonized Tariff Schedule.

(F) DEFINITION.—In this paragraph, the term "special import quota" means a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota.

(g) LIMITED GLOBAL IMPORT QUOTA FOR UPLAND COTTON.—

(1) IN GENERAL.—The President shall carry out an import quota program that provides that whenever the Secretary determines and announces that the average price of the base quality of upland cotton, as determined by the Secretary, in the designated spot markets for a month exceeded 130 percent of the average price of such quality of cotton in the markets for the preceding 36 months, notwithstanding any other provision of law, there shall immediately be in effect a limited global import quota subject to the following conditions:

(A) QUANTITY.—The quantity of the quota shall be equal to 21 days of domestic mill consumption of upland cotton at the seasonally adjusted average rate of the most recent 3 months for which data are available.

(B) QUANTITY IF PRIOR QUOTA.—If a quota has been established under this subsection during the preceding 12 months, the quantity of the quota next established under this subsection shall be the smaller of 21 days of domestic mill consumption calculated under subparagraph (A) or the quantity required to increase the supply to 130 percent of the demand.

(C) PREFERENTIAL TARIFF TREATMENT.—The quantity under a limited global import quota shall be considered to be an in-quota quantity for purposes of—

(i) section 213(d) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(d));

(ii) section 204 of the Andean Trade Preference Act (19 U.S.C. 3203);

(iii) section 503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d)); and

(iv) General Note 3(a)(iv) to the Harmonized Tariff Schedule.

(D) DEFINITIONS.—In this subsection:

(i) SUPPLY.—The term "supply" means, using the latest official data of the Bureau of the Census, the Department of Agriculture, and the Department of the Treasury—

(I) the carry-over of upland cotton at the beginning of the marketing year (adjusted to 480-pound bales) in which the quota is established;

(II) production of the current crop; and

(III) imports to the latest date available during the marketing year.

(ii) DEMAND.—The term "demand" means—

(I) the average seasonally adjusted annual rate of domestic mill consumption in the most recent 3 months for which data are available; and

(II) the larger of—

(aa) average exports of upland cotton during the preceding 6 marketing years; or

(bb) cumulative exports of upland cotton plus outstanding export sales for the marketing year in which the quota is established.

(iii) LIMITED GLOBAL IMPORT QUOTA.—The term "limited global import quota" means a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota.

(D) QUOTA ENTRY PERIOD.—When a quota is established under this subsection, cotton may be entered under the quota during the 90-day period beginning on the date the quota is established by the Secretary.

(2) NO OVERLAP.—Notwithstanding paragraph (1), a quota period may not be established that overlaps an existing quota

period or a special quota period established under subsection (f)(3).

SEC. 1105. PAYMENT LIMITATIONS.

(a) LIMITATION ON PAYMENTS UNDER PRODUCTION FLEXIBILITY CONTRACTS.—The total amount of contract payments made to a person under 1 or more production flexibility contracts during any fiscal year may not exceed $40,000.

(b) LIMITATION ON MARKETING LOAN GAINS AND LOAN DEFICIENCY PAYMENTS.—

(1) LIMITATION.—The total amount of payments specified in paragraph (2) that a person shall be entitled to receive under section 1104 for contract commodities and oilseeds during any fiscal year may not exceed $75,000.

(2) DESCRIPTION OF PAYMENTS.—The payments referred to in paragraph (1) are the following:

(A) Any gain realized by a producer from repaying a marketing assistance loan for a crop of any loan commodity at a lower level than the original loan rate established for the commodity under section 1104(b).

(B) Any loan deficiency payment received for a loan commodity under section 1104(e).

(c) APPLICABILITY OF OTHER PROVISIONS REGARDING PAYMENT LIMITATIONS.—Paragraphs (5), (6), and (7) of section 1001 and sections 1001A through 1001C of the Food Security Act of 1985 (7 U.S.C. 1308 et seq.) shall apply with respect to the application of payment limitations under this section.

(d) CONFORMING AMENDMENTS.—Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended by striking "1997" each place it appears in paragraphs (1)(A), (1)(B), and (2)(A) and inserting "1995".

SEC. 1106. PEANUT PROGRAM.

(a) QUOTA PEANUTS.—

(1) AVAILABILITY OF LOANS.—The Secretary shall make nonrecourse loans available to producers of quota peanuts.

(2) LOAN RATE.—The national average quota loan rate for quota peanuts shall be $610 per ton.

(3) INSPECTION, HANDLING, OR STORAGE.—The loan amount may not be reduced by the Secretary by any deductions for inspection, handling, or storage.

(4) LOCATION AND OTHER FACTORS.—The Secretary may make adjustments in the loan rate for quota peanuts for location of peanuts and such other factors as are authorized by section 411 of the Agricultural Adjustment Act of 1938.

(b) ADDITIONAL PEANUTS.—

(1) IN GENERAL.—The Secretary shall make nonrecourse loans available to producers of additional peanuts at such rates as the Secretary finds appropriate, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

(2) ANNOUNCEMENT.—The Secretary shall announce the loan rate for additional peanuts of each crop not later than

February 15 preceding the marketing year for the crop for which the loan rate is being determined.

(c) AREA MARKETING ASSOCIATIONS.—

(1) WAREHOUSE STORAGE LOANS.—

(A) IN GENERAL.—In carrying out subsections (a) and (b), the Secretary shall make warehouse storage loans available in each of the producing areas (described in section 1446.95 of title 7 of the Code of Federal Regulations (January 1, 1989)) to a designated area marketing association of peanut producers that is selected and approved by the Secretary and that is operated primarily for the purpose of conducting the loan activities. The Secretary may not make warehouse storage loans available to any cooperative that is engaged in operations or activities concerning peanuts other than those operations and activities specified in this section and section 358e of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a).

(B) ADMINISTRATIVE AND SUPERVISORY ACTIVITIES.—An area marketing association shall be used in administrative and supervisory activities relating to loans and marketing activities under this section and section 358e of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a).

(C) ASSOCIATION COSTS.—Loans made to the association under this paragraph shall include such costs as the area marketing association reasonably may incur in carrying out the responsibilities, operations, and activities of the association under this section and section 358e of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a).

(2) POOLS FOR QUOTA AND ADDITIONAL PEANUTS.—

(A) IN GENERAL.—The Secretary shall require that each area marketing association establish pools and maintain complete and accurate records by area and segregation for quota peanuts handled under loan and for additional peanuts placed under loan, except that separate pools shall be established for Valencia peanuts produced in New Mexico. Bright hull and dark hull Valencia peanuts shall be considered as separate types for the purpose of establishing the pools.

(B) NET GAINS.—Net gains on peanuts in each pool, unless otherwise approved by the Secretary, shall be distributed only to producers who placed peanuts in the pool and shall be distributed in proportion to the value of the peanuts placed in the pool by each producer. Net gains for peanuts in each pool shall consist of the following:

(i) QUOTA PEANUTS.—For quota peanuts, the net gains over and above the loan indebtedness and other costs or losses incurred on peanuts placed in the pool.

(ii) ADDITIONAL PEANUTS.—For additional peanuts, the net gains over and above the loan indebtedness and other costs or losses incurred on peanuts placed in the pool for additional peanuts.

(d) LOSSES.—Losses in quota area pools shall be covered using the following sources in the following order of priority:

(1) TRANSFERS FROM ADDITIONAL LOAN POOLS.—The proceeds due any producer from any pool shall be reduced by the amount of any loss that is incurred with respect to peanuts transferred from an additional loan pool to a quota loan pool by the producer under section 358–1(b)(8) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1(b)(8)).

(2) OTHER PRODUCERS IN SAME POOL.—Further losses in an area quota pool shall be offset by reducing the gain of any producer in the pool by the amount of pool gains attributed to the same producer from the sale of additional peanuts for domestic and export edible use.

(3) USE OF MARKETING ASSESSMENTS.—The Secretary shall use funds collected under subsection (g) (except funds attributable to handlers) to offset further losses in area quota pools. The Secretary shall transfer to the Treasury those funds collected under subsection (g) and available for use under this subsection that the Secretary determines are not required to cover losses in area quota pools.

(4) CROSS COMPLIANCE.—Further losses in area quota pools, other than losses incurred as a result of transfers from additional loan pools to quota loan pools under section 358–1(b)(8) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1(b)(8)), shall be offset by any gains or profits from quota pools in other production areas (other than separate type pools established under subsection (c)(2)(A) for Valencia peanuts produced in New Mexico) in such manner as the Secretary shall by regulation prescribe.

(5) INCREASED ASSESSMENTS.—If use of the authorities provided in the preceding paragraphs is not sufficient to cover losses in an area quota pool, the Secretary shall increase the marketing assessment established under subsection (g) by such an amount as the Secretary considers necessary to cover the losses. The increased assessment shall apply only to quota peanuts in the production area covered by the pool. Amounts collected under subsection (g) as a result of the increased assessment shall be retained by the Secretary to cover losses in that pool.

(e) DISAPPROVAL OF QUOTAS.—Notwithstanding any other provision of law, no loan for quota peanuts may be made available by the Secretary for any crop of peanuts with respect to which poundage quotas have been disapproved by producers, as provided for in section 358–1(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1(d)).

(f) QUALITY IMPROVEMENT.—

(1) IN GENERAL.—With respect to peanuts under loan, the Secretary shall—

(A) promote the crushing of peanuts at a greater risk of deterioration before peanuts of a lesser risk of deterioration;

(B) ensure that all Commodity Credit Corporation inventories of peanuts sold for domestic edible use must be shown to have been officially inspected by licensed Department of Agriculture inspectors both as farmer stock and shelled or cleaned in-shell peanuts;

(C) continue to endeavor to operate the peanut program so as to improve the quality of domestic peanuts and ensure the coordination of activities under the Peanut Administrative Committee established under Marketing Agreement No. 146, regulating the quality of domestically produced peanuts (under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937); and

(D) ensure that any changes made in the peanut program as a result of this subsection requiring additional production or handling at the farm level shall be reflected as an upward adjustment in the Department of Agriculture loan schedule.

(2) EXPORTS AND OTHER PEANUTS.—The Secretary shall require that all peanuts in the domestic and export markets fully comply with all quality standards under Marketing Agreement No. 146.

(g) MARKETING ASSESSMENT.—

(1) IN GENERAL.—The Secretary shall provide for a nonrefundable marketing assessment. The assessment shall be made on a per pound basis in an amount equal to 1.1 percent for each of the 1994 and 1995 crops, 1.15 percent for the 1996 crop, and 1.2 percent for each of the 1997 through 2002 crops, of the national average quota or additional peanut loan rate for the applicable crop.

(2) FIRST PURCHASERS.—

(A) IN GENERAL.—Except as provided under paragraphs (3) and (4), the first purchaser of peanuts shall—

(i) collect from the producer a marketing assessment equal to the quantity of peanuts acquired multiplied by—

(I) in the case of each of the 1994 and 1995 crops, .55 percent of the applicable national average loan rate;

(II) in the case of the 1996 crop, .6 percent of the applicable national average loan rate; and

(III) in the case of each of the 1997 through 2002 crops, .65 percent of the applicable national average loan rate;

(ii) pay, in addition to the amount collected under clause (i), a marketing assessment in an amount equal to the quantity of peanuts acquired multiplied by .55 percent of the applicable national average loan rate; and

(iii) remit the amounts required under clauses (i) and (ii) to the Commodity Credit Corporation in a manner specified by the Secretary.

(B) DEFINITION OF FIRST PURCHASER.—In this subsection, the term "first purchaser" means a person acquiring peanuts from a producer except that in the case of peanuts forfeited by a producer to the Commodity Credit Corporation, the term means the person acquiring the peanuts from the Commodity Credit Corporation.

(3) OTHER PRIVATE MARKETINGS.—In the case of a private marketing by a producer directly to a consumer through a retail or wholesale outlet or in the case of a marketing by the producer outside of the continental United States, the producer shall be responsible for the full amount of the assessment and shall remit the assessment by such time as is specified by the Secretary.

(4) LOAN PEANUTS.—In the case of peanuts that are pledged as collateral for a loan made under this section, ½ of the assessment shall be deducted from the proceeds of the loan. The remainder of the assessment shall be paid by the first purchaser of the peanuts. For purposes of computing net gains on peanuts under this section, the reduction in loan proceeds shall be treated as having been paid to the producer.

(5) PENALTIES.—If any person fails to collect or remit the reduction required by this subsection or fails to comply with the requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

(A) the quantity of peanuts involved in the violation; by

(B) the national average quota peanut rate for the applicable crop year.

(6) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.

(h) CROPS.—Subsections (a) through (f) shall be effective only for the 1996 through 2002 crops of peanuts.

(i) MARKETING QUOTAS.—

(1) IN GENERAL.—Part VI of subtitle B of title III of the Agricultural Adjustment Act of 1938 is amended—

(A) in section 358–1 (7 U.S.C. 1358–1)—

(i) in the section heading, by striking ***"1991 THROUGH 1997 CROPS OF"****;*

(ii) in subsections (a)(1), (b)(1)(B), (b)(2)(A), (b)(2)(C), and (b)(3)(A), by striking "of the 1991 through 1997 marketing years" each place it appears and inserting "marketing year";

(iii) in subsection (a)(3), by striking "1990" and inserting "1990, for the 1991 through 1995 marketing years, and 1995, for the 1996 through 2002 marketing years";

(iv) in subsection (b)(1)(A)—

(I) by striking "each of the 1991 through 1997 marketing years" and inserting "each marketing year"; and

(II) in clause (i), by inserting before the semicolon the following: ", in the case of the 1991 through 1995 marketing years, and the 1995 marketing year, in the case of the 1996 through 2002 marketing years"; and

(v) in subsection (f), by striking "1997" and inserting "2002";

(B) in section 358b (7 U.S.C. 1358b)—

(i) in the section heading, by striking **“1991 THROUGH 1995 CROPS OF”***; and*

(ii) in subsection (c), by striking “1995” and inserting “2002”;

(C) in section 358c(d) (7 U.S.C. 1358c(d)), by striking “1995” and inserting “2002”; and

(D) in section 358e (7 U.S.C. 1359a)—

(i) in the section heading, by striking **“FOR 1991 THROUGH 1997 CROPS OF PEANUTS”***; and*

(ii) in subsection (i), by striking “1997” and inserting “2002”.

(2) ELIMINATION OF QUOTA FLOOR.—Section 358–1(a)(1) of the Act (7 U.S.C. 1358–1(a)(1)) is amended by striking the second sentence.

(3) TEMPORARY QUOTA ALLOCATION.—Section 358–1 of the Act (7 U.S.C. 1358–1) is amended—

(A) in subsection (a)(1), by striking “domestic edible, seed,” and inserting “domestic edible use”; and

(B) in subsection (b)(2)—

(i) in subparagraph (A), by striking “subparagraph (B) and subject to”; and

(ii) by striking subparagraph (B) and inserting the following:

“(B) TEMPORARY QUOTA ALLOCATION.—

“(i) ALLOCATION RELATED TO SEED PEANUTS.—Temporary allocation of quota pounds for the marketing year only in which the crop is planted shall be made to producers for each of the 1996 through 2002 marketing years as provided in this subparagraph.

“(ii) QUANTITY.—The temporary quota allocation shall be equal to the pounds of seed peanuts planted on the farm, as may be adjusted under regulations prescribed by the Secretary.

“(iii) ADDITIONAL QUOTA.—The temporary allocation of quota pounds under this paragraph shall be in addition to the farm poundage quota otherwise established under this subsection and shall be credited, for the applicable marketing year only, in total to the producer of the peanuts on the farm in a manner prescribed by the Secretary.

“(iv) EFFECT OF OTHER REQUIREMENTS.—Nothing in this section alters or changes the requirements regarding the use of quota and additional peanuts established by section 358e(b).”.

(4) UNDERMARKETINGS.—Part VI of subtitle B of title III of the Act is amended—

(A) in section 358–1(b) (7 U.S.C. 1358–1(b))—

(i) in paragraph (1)(B), by striking “including—” and clauses (i) and (ii) and inserting “including any increases resulting from the allocation of quotas voluntarily released for 1 year under paragraph (7).”;

(ii) in paragraph (3)(B), by striking “include—” and clauses (i) and (ii) and inserting “include any in-

crease resulting from the allocation of quotas voluntarily released for 1 year under paragraph (7).''; and

(iii) by striking paragraphs (8) and (9); and

(B) in section 358b(a) (7 U.S.C. 1358b(a))—

(i) in paragraph (1), by striking ''(including any applicable under marketings)'' both places it appears;

(ii) in paragraph (1)(A), by striking ''of undermarketings and'';

(iii) in paragraph (2), by striking ''(including any applicable under marketings)''; and

(iv) in paragraph (3), by striking ''(including any applicable undermarketings)''.

(5) DISASTER TRANSFERS.—Section 358–1(b) of the Act (7 U.S.C. 1358–1(b)), as amended by paragraph (4)(A)(iii), is further amended by adding at the end the following:

''(8) DISASTER TRANSFERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), additional peanuts produced on a farm from which the quota poundage was not harvested and marketed because of drought, flood, or any other natural disaster, or any other condition beyond the control of the producer, may be transferred to the quota loan pool for pricing purposes on such basis as the Secretary shall by regulation provide.

''(B) LIMITATION.—The poundage of peanuts transferred under subparagraph (A) shall not exceed the difference between—

''(i) the total quantity of peanuts meeting quality requirements for domestic edible use, as determined by the Secretary, marketed from the farm; and

''(ii) the total farm poundage quota, excluding quota pounds transferred to the farm in the fall.

''(C) SUPPORT RATE.—Peanuts transferred under this paragraph shall be supported at not more than 70 percent of the quota support rate for the marketing years in which the transfers occur. The transfers for a farm shall not exceed 25 percent of the total farm quota pounds, excluding pounds transferred in the fall.''.

SEC. 1107. SUGAR PROGRAM.

(a) SUGARCANE.—The Secretary shall make loans available to processors of domestically grown sugarcane at a rate equal to 18 cents per pound for raw cane sugar.

(b) SUGAR BEETS.—The Secretary shall make loans available to processors of domestically grown sugar beets at a rate equal to 22.9 cents per pound for refined beet sugar.

(c) TERM OF LOANS.—

(1) IN GENERAL.—Loans under this section during any fiscal year shall be made available not earlier than the beginning of the fiscal year and shall mature at the earlier of—

(A) the end of 9 months; or

(B) the end of the fiscal year.

(2) SUPPLEMENTAL LOANS.—In the case of loans made under this section in the last 3 months of a fiscal year, the processor may repledge the sugar as collateral for a second loan in the subsequent fiscal year, except that the second loan shall—

(A) be made at the loan rate in effect at the time the second loan is made; and

(B) mature in 9 months less the quantity of time that the first loan was in effect.

(d) LOAN TYPE; PROCESSOR ASSURANCES.—

(1) RECOURSE LOANS.—Subject to paragraph (2), the Secretary shall carry out this section through the use of recourse loans.

(2) NONRECOURSE LOANS.—During any fiscal year in which the tariff rate quota for imports of sugar into the United States is established at, or is increased to, a level in excess of 1,500,000 short tons raw value, the Secretary shall carry out this section by making available nonrecourse loans. Any recourse loan previously made available by the Secretary under this section during the fiscal year shall be changed by the Secretary into a nonrecourse loan.

(3) PROCESSOR ASSURANCES.—If the Secretary is required under paragraph (2) to make nonrecourse loans available during a fiscal year or to change recourse loans into nonrecourse loans, the Secretary shall obtain from each processor that receives a loan under this section such assurances as the Secretary considers adequate to ensure that the processor will provide payments to producers that are proportional to the value of the loan received by the processor for sugar beets and sugarcane delivered by producers served by the processor. The Secretary may establish appropriate minimum payments for purposes of this paragraph.

(e) MARKETING ASSESSMENT.—

(1) SUGARCANE.—Effective for marketings of raw cane sugar during the 1996 through 2003 fiscal years, the first processor of sugarcane shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to—

(A) in the case of marketings during fiscal year 1996, 1.1 percent of the loan rate established under subsection (a) per pound of raw cane sugar, processed by the processor from domestically produced sugarcane or sugarcane molasses, that has been marketed (including the transfer or delivery of the sugar to a refinery for further processing or marketing); and

(B) in the case of marketings during each of fiscal years 1997 through 2003, 1.375 percent of the loan rate established under subsection (a) per pound of raw cane sugar, processed by the processor from domestically produced sugarcane or sugarcane molasses, that has been marketed (including the transfer or delivery of the sugar to a refinery for further processing or marketing).

(2) SUGAR BEETS.—Effective for marketings of beet sugar during the 1996 through 2003 fiscal years, the first processor of sugar beets shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to—

(A) in the case of marketings during fiscal year 1996, 1.1794 percent of the loan rate established under subsection (a) per pound of beet sugar, processed by the processor from

domestically produced sugar beets or sugar beet molasses, that has been marketed; and

(B) in the case of marketings during each of fiscal years 1997 through 2003, 1.47425 percent of the loan rate established under subsection (a) per pound of beet sugar, processed by the processor from domestically produced sugar beets or sugar beet molasses, that has been marketed.

(3) COLLECTION.—

(A) TIMING.—A marketing assessment required under this subsection shall be collected on a monthly basis and shall be remitted to the Commodity Credit Corporation not later than 30 days after the end of each month. Any cane sugar or beet sugar processed during a fiscal year that has not been marketed by September 30 of the year shall be subject to assessment on that date. The sugar shall not be subject to a second assessment at the time that it is marketed.

(B) MANNER.—Subject to subparagraph (A), marketing assessments shall be collected under this subsection in the manner prescribed by the Secretary and shall be nonrefundable.

(4) PENALTIES.—If any person fails to remit the assessment required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

(A) the quantity of cane sugar or beet sugar involved in the violation; by

(B) the loan rate for the applicable crop of sugarcane or sugar beets.

(5) ENFORCEMENT.—The Secretary may enforce this subsection in a court of the United States.

(f) FORFEITURE PENALTY.—

(1) IN GENERAL.—A penalty shall be assessed on the forfeiture of any sugar pledged as collateral for a nonrecourse loan under this section.

(2) SUGARCANE.—The penalty for sugarcane shall be 1 cent per pound.

(3) SUGAR BEETS.—The penalty for sugar beets shall bear the same relation to the penalty for sugarcane as the marketing assessment for sugar beets bears to the marketing assessment for sugarcane.

(4) EFFECT OF FORFEITURE.—Any payments owed producers by a processor that forfeits of any sugar pledged as collateral for a nonrecourse loan shall be reduced in proportion to the loan forfeiture penalty incurred by the processor.

(g) INFORMATION REPORTING.—

(1) DUTY OF PROCESSORS AND REFINERS TO REPORT.—A sugarcane processor, cane sugar refiner, and sugar beet processor shall furnish the Secretary, on a monthly basis, such information as the Secretary may require to administer sugar programs, including the quantity of purchases of sugarcane,

sugar beets, and sugar, and production, importation, distribution, and stock levels of sugar.

(2) PENALTY.—Any person willfully failing or refusing to furnish the information, or furnishing willfully any false information, shall be subject to a civil penalty of not more than $10,000 for each such violation.

(3) MONTHLY REPORTS.—Taking into consideration the information received under paragraph (1), the Secretary shall publish on a monthly basis composite data on production, imports, distribution, and stock levels of sugar.

(h) MARKETING ALLOTMENTS.—Part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359aa et seq.) is repealed.

(i) CROPS.—This section (other than subsection (h)) shall be effective only for the 1996 through 2002 crops of sugar beets and sugarcane.

SEC. 1108. ADMINISTRATION.

(a) COMMODITY CREDIT CORPORATION.—

(1) USE OF CORPORATION.—The Secretary shall carry out this subtitle through the Commodity Credit Corporation.

(2) SALARIES AND EXPENSES.—No funds of the Corporation shall be used for any salary or expense of any officer or employee of the Department of Agriculture in connection with the administration of payments or loans under this subtitle.

(b) ADMINISTRATION.—Title IV of the Agricultural Adjustment Act of 1938 (as added by section 1109) shall apply to the administration of this subtitle.

(c) REGULATIONS.—The Secretary may issue such regulations as the Secretary determines necessary to carry out this subtitle.

SEC. 1109. ELIMINATION OF PERMANENT PRICE SUPPORT AUTHORITY.

(a) AGRICULTURAL ADJUSTMENT ACT OF 1938.—The Agricultural Adjustment Act of 1938 is amended—

(1) in title III—

(A) in subtitle B—

(i) by striking parts II through V (7 U.S.C. 1326–1351); and

(ii) in part VI, by striking sections 358, 358a, and 358d (7 U.S.C. 1358, 1358a, and 1359); and

(B) by striking subtitle D (7 U.S.C. 1379a–1379j); and

(2) by striking title IV (7 U.S.C. 1401–1407).

(b) AGRICULTURAL ACT OF 1949.—

(1) TRANSFER OF CERTAIN SECTIONS.—The Agricultural Act of 1949 is amended—

(A) by transferring sections 106, 106A, and 106B (7 U.S.C. 1445, 1445–1, 1445–2) to appear after section 314A of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314–1) and redesignating the transferred sections as sections 315, 315A, and 315B, respectively;

(B) by transferring sections 111, 201(c), and 204 (7 U.S.C. 1445f, 1446(c), 1446e) to appear after section 304 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1304) and redesignating the transferred sections as sections 305, 306, and 307, respectively;

(C) by transferring sections 403, 405, 407, 412, and 422 (7 U.S.C. 1423, 1425, 1427, 1429, 1431a) to appear after section 393 (7 U.S.C. 1393) and redesignating the transferred sections as sections 411, 412, 413, 414, and 415, respectively; and

(D) by transferring section 416 (7 U.S.C. 1431) to appear after section 415 of the Agricultural Adjustment Act of 1938 (as transferred and redesignated by subparagraph (C)).

(2) REPEAL.—The Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) (as amended by paragraph (1)) is repealed.

(c) CONFORMING AMENDMENTS.—The Agricultural Adjustment Act of 1938 is amended—

(1) in section 306 (as transferred and redesignated by subsection (b)(1)(B)), by striking "204" and inserting "307"; and

(2) by striking section 411 (as transferred and redesignated by subsection (b)(1)(C)) and inserting the following:

"TITLE IV—ADMINISTRATION OF LOANS

"SEC. 411. ADJUSTMENTS FOR GRADE, TYPE, QUALITY, LOCATION, AND OTHER FACTORS.

"The Secretary may make such adjustments in the announced loan rate for a commodity as the Secretary considers appropriate to reflect differences in grade, type, quality, location, and other factors.".

SEC. 1110. EFFECT OF AMENDMENTS.

(a) EFFECT ON PRIOR CROPS.—Except as otherwise specifically provided and notwithstanding any other provision of law, this subtitle and the amendments made by this subtitle shall not affect the authority of the Secretary to carry out a price support or production adjustment program for any of the 1991 through 1995 crops of an agricultural commodity established under a provision of law in effect immediately before the date of the enactment of this Act.

(b) LIABILITY.—A provision of this subtitle or an amendment made by this subtitle shall not affect the liability of any person under any provision of law as in effect before the date of the enactment of this Act.

Subtitle B—Conservation

SEC. 1201. CONSERVATION.

(a) FUNDING.—Subtitle E of title XII of the Food Security Act of 1985 (16 U.S.C. 3841 et seq.) is amended to read as follows:

"Subtitle E—Funding

"SEC. 1241. FUNDING.

"(a) MANDATORY EXPENSES.—For each of fiscal years 1996 through 2002, the Secretary shall use the funds of the Commodity Credit Corporation to carry out the programs authorized by—

"(1) subchapter B of chapter 1 of subtitle D (including contracts extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 16 U.S.C. 3831 note));

"(2) subchapter C of chapter 1 of subtitle D; and

"(3) chapter 4 of subtitle D.

"(b) LIVESTOCK ENVIRONMENTAL ASSISTANCE PROGRAM.—For each of fiscal years 1996 through 2002, $100,000,000 of the funds of the Commodity Credit Corporation shall be available for providing technical assistance, cost-sharing payments, and incentive payments for practices relating to livestock production under the livestock environmental assistance program under chapter 4 of subtitle D.".

(b) LIVESTOCK ENVIRONMENTAL ASSISTANCE PROGRAM.—To carry out the programs funded under the amendment made by subsection (a), subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3830 et seq.) is amended by adding at the end the following:

"CHAPTER 4—LIVESTOCK ENVIRONMENTAL ASSISTANCE PROGRAM

"SEC. 1240. DEFINITIONS.

"In this chapter:

"(1) LAND MANAGEMENT PRACTICE.—The term 'land management practice' means a site-specific nutrient or manure management, irrigation management, tillage or residue management, grazing management, or other land management practice that the Secretary determines is needed to protect, in the most cost effective manner, water, soil, or related resources from degradation due to livestock production.

"(2) LARGE CONFINED LIVESTOCK OPERATION.—The term 'large confined livestock operation' means an operation that—

"(A) is a confined animal feeding operation; and

"(B) has more than—

"(i) 55 mature dairy cattle;

"(ii) 10,000 beef cattle;

"(iii) 30,000 laying hens or broilers (if the facility has continuous overflow watering);

"(iv) 100,000 laying hens or broilers (if the facility has a liquid manure system);

"(v) 55,000 turkeys;

"(vi) 15,000 swine; or

"(vii) 10,000 sheep or lambs.

"(3) LIVESTOCK.—The term 'livestock' means dairy cows, beef cattle, laying hens, broilers, turkeys, swine, sheep, lambs, and such other animals as determined by the Secretary.

"(4) OPERATOR.—The term 'operator' means a person who is engaged in livestock production (as defined by the Secretary).

"(5) STRUCTURAL PRACTICE.—The term 'structural practice' means the establishment of an animal waste management facility, terrace, grassed waterway, contour grass strip, filterstrip, or other structural practice that the Secretary determines is needed to protect, in the most cost effective manner, water, soil, or related resources from degradation due to livestock production.

"SEC. 1240A. ESTABLISHMENT AND ADMINISTRATION OF LIVESTOCK ENVIRONMENTAL ASSISTANCE PROGRAM.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—During the 1996 through 2002 fiscal years, the Secretary shall provide technical assistance, cost-sharing payments, and incentive payments to operators who enter into contracts with the Secretary, through a livestock environmental assistance program.

"(2) ELIGIBLE PRACTICES.—

"(A) STRUCTURAL PRACTICES.—An operator who implements a structural practice shall be eligible for technical assistance or cost-sharing payments, or both.

"(B) LAND MANAGEMENT PRACTICES.—An operator who performs a land management practice shall be eligible for technical assistance or incentive payments, or both.

"(3) ELIGIBLE LAND.—Assistance under this chapter may be provided with respect to land that is used for livestock production and on which a serious threat to water, soil, or related resources exists, as determined by the Secretary, by reason of the soil types, terrain, climatic, soil, topographic, flood, or saline characteristics, or other factors or natural hazards.

"(4) SELECTION CRITERIA.—In providing technical assistance, cost-sharing payments, and incentive payments to operators in a region, watershed, or conservation priority area in which an agricultural operation is located, the Secretary shall consider—

"(A) the significance of the water, soil, and related natural resource problems; and

"(B) the maximization of environmental benefits per dollar expended.

"(b) APPLICATION AND TERM.—

"(1) IN GENERAL.—A contract between an operator and the Secretary under this chapter may—

"(A) apply to 1 or more structural practices or 1 or more land management practices, or both; and

"(B) have a term of not less than 5, nor more than 10, years, as determined appropriate by the Secretary, depending on the practice or practices that are the basis of the contract.

"(2) DUTIES OF OPERATORS AND SECRETARY.—To receive cost sharing or incentive payments, or technical assistance, participating operators shall comply with all terms and conditions of the contract and a plan, as established by the Secretary.

"(c) STRUCTURAL PRACTICES.—

"(1) COMPETITIVE OFFER.—The Secretary shall administer a competitive offer system for operators proposing to receive cost-sharing payments in exchange for the implementation of 1 or more structural practices by the operator. The competitive offer system shall consist of—

"(A) the submission of a competitive offer by the operator in such manner as the Secretary may prescribe; and

"(B) evaluation of the offer in light of the selection criteria established under subsection (a)(4) and the projected cost of the proposal, as determined by the Secretary.

"(2) CONCURRENCE OF OWNER.—If the operator making an offer to implement a structural practice is a tenant of the land involved in agricultural production, for the offer to be acceptable, the operator shall obtain the concurrence of the owner of the land with respect to the offer.

"(d) LAND MANAGEMENT PRACTICES.—The Secretary shall establish an application and evaluation process for awarding technical assistance or incentive payments, or both, to an operator in exchange for the performance of 1 or more land management practices by the operator.

"(e) COST-SHARING, INCENTIVE PAYMENTS, AND TECHNICAL ASSISTANCE.—

"(1) COST-SHARING PAYMENTS.—

"(A) IN GENERAL.—The Federal share of cost-sharing payments to an operator proposing to implement 1 or more structural practices shall not be greater than 75 percent of the projected cost of each practice, as determined by the Secretary, taking into consideration any payment received by the operator from a State or local government.

"(B) LIMITATION.—An operator of a large confined livestock operation shall not be eligible for cost-sharing payments to construct an animal waste management facility.

"(C) OTHER PAYMENTS.—An operator shall not be eligible for cost-sharing payments for structural practices on eligible land under this chapter if the operator receives cost-sharing payments or other benefits for the same land under chapter 1, 2, or 3.

"(2) INCENTIVE PAYMENTS.—The Secretary shall make incentive payments in an amount and at a rate determined by the Secretary to be necessary to encourage an operator to perform 1 or more land management practices.

"(3) TECHNICAL ASSISTANCE.—

"(A) FUNDING.—The Secretary shall allocate funding under this chapter for the provision of technical assistance according to the purpose and projected cost for which the technical assistance is provided for a fiscal year. The allocated amount may vary according to the type of expertise required, quantity of time involved, and other factors as determined appropriate by the Secretary. Funding shall not exceed the projected cost to the Secretary of the technical assistance provided for a fiscal year.

"(B) OTHER AUTHORITIES.—The receipt of technical assistance under this chapter shall not affect the eligibility of the operator to receive technical assistance under other authorities of law available to the Secretary.

"(f) LIMITATION ON PAYMENTS.—

"(1) IN GENERAL.—The total amount of cost-sharing and incentive payments paid to a person under this chapter may not exceed—

"(A) $10,000 for any fiscal year; or

"(B) $50,000 for any multiyear contract.

"(2) REGULATIONS.—The Secretary shall issue regulations that are consistent with section 1001 for the purpose of—

"(A) defining the term 'person' as used in paragraph (1); and

"(B) prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitations established under this subsection.

"(g) REGULATIONS.—Not later than 180 days after the effective date of this subsection, the Secretary shall issue regulations to implement the livestock environmental assistance program established under this chapter.".

(c) CONFORMING AMENDMENTS.—

(1) COMMODITY CREDIT CORPORATION CHARTER ACT.—Section 5(g) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(g)) is amended to read as follows:

"(g) Carry out conservation functions and programs.".

(2) WETLANDS RESERVE PROGRAM.—

(A) IN GENERAL.—Section 1237 of the Food Security Act of 1985 (16 U.S.C. 3837) is amended—

(i) in subsection (b)(2)—

(I) by striking "not less" and inserting "not more"; and

(II) by striking "2000" and inserting "2002"; and

(ii) in subsection (c), by striking "2000" and inserting "2002".

(B) LENGTH OF EASEMENT.—Section 1237A(e) of the Food Security Act of 1985 (16 U.S.C. 3837a(e)) is amended by striking paragraph (2) and inserting the following:

"(2) shall be for 15 years, but in no case shall be a permanent easement.".

(3) CONSERVATION RESERVE PROGRAM.—

(A) IN GENERAL.—Section 1231(d) of the Food Security Act of 1985 (16 U.S.C. 3831(d)) is amended by striking "total of" and all that follows through the period at the end of the subsection and inserting "total of 36,400,000 acres.".

(B) OPTIONAL CONTRACT TERMINATION BY PRODUCERS.—Section 1235 of the Food Security Act of 1985 (16 U.S.C. 3835) is amended by adding at the end the following:

"(e) TERMINATION BY OWNER OR OPERATOR.—

"(1) NOTICE OF TERMINATION.—An owner or operator of land subject to a contract entered into under this subchapter may terminate the contract by submitting to the Secretary written notice of the intention of the owner or operator to terminate the contract.

"(2) EFFECTIVE DATE.—The contract termination shall take effect 60 days after the date on which the owner or operator submits the written notice under paragraph (1).

"(3) PRORATED RENTAL PAYMENT.—If a contract entered into under this subchapter is terminated under this subsection before the end of the fiscal year for which a rental payment is due, the Secretary shall provide a prorated rental payment covering the portion of the fiscal year during which the contract was in effect.

"(4) RENEWED ENROLLMENT.—The termination of a contract entered into under this subchapter shall not affect the ability of the owner or operator who requested the termination to submit a subsequent bid to enroll the land that was subject to the contract into the conservation reserve.

"(5) CONSERVATION REQUIREMENTS.—If land that was subject to a contract is returned to production of an agricultural commodity, the conservation requirements under subtitles B and C shall apply to the use of the land to the extent that the requirements are similar to those requirements imposed on other similar lands in the area, except that the requirements may not be more onerous that the requirements imposed on other lands.

"(6) REPAYMENT OF COST SHARE.—A person who terminates a contract entered into under this subchapter within less than 3 years after entering into the contract shall reimburse the Secretary for any cost share assistance provided under the contract.".

(C) LIMITATION.—Notwithstanding any other provision of law, no new acres shall be enrolled in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) in calendar year 1997.

Subtitle C—Agricultural Promotion and Export Programs

SEC. 1301. MARKET PROMOTION PROGRAM.

Effective October 1, 1995, section 211(c)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5641(c)(1)) is amended—

(1) by striking "and" after "1991 through 1993,"; and

(2) by striking "through 1997," and inserting "through 1995, and not more than $100,000,000 for each of fiscal years 1996 through 2002,".

SEC. 1302. EXPORT ENHANCEMENT PROGRAM.

Effective October 1, 1995, section 301(e)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5651(e)(1)) is amended to read as follows:

"(1) IN GENERAL.—The Commodity Credit Corporation shall make available to carry out the program established under this section not more than—

"(A) $350,000,000 for fiscal year 1996;

"(B) $350,000,000 for fiscal year 1997;

"(C) $500,000,000 for fiscal year 1998;

"(D) $550,000,000 for fiscal year 1999;

"(E) $579,000,000 for fiscal year 2000;

"(F) $478,000,000 for fiscal year 2001; and

"(G) $478,000,000 for fiscal year 2002.".

Subtitle D—Miscellaneous

SEC. 1401. CROP INSURANCE.

(a) CATASTROPHIC RISK PROTECTION.—Section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)) is amended—

(1) in paragraph (4), by adding at the end the following:

"(C) DELIVERY OF COVERAGE.—

"(i) IN GENERAL.—In full consultation with approved insurance providers, the Secretary may continue to offer catastrophic risk protection in a State (or a portion of a State) through local offices of the Department if the Secretary determines that there is an insufficient number of approved insurance providers operating in the State or portion to adequately provide catastrophic risk protection coverage to producers.

"(ii) COVERAGE BY APPROVED INSURANCE PROVIDERS.—To the extent that catastrophic risk protection coverage by approved insurance providers is sufficiently available in a State as determined by the Secretary, only approved insurance providers may provide the coverage in the State.

"(iii) CURRENT POLICIES.—Subject to clause (ii), all catastrophic risk protection policies written by local offices of the Department shall be transferred (including all fees collected for the crop year in which the approved insurance provider will assume the policies) to the approved insurance provider for performance of all sales, service, and loss adjustment functions."; and

(2) in paragraph (7), by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.—Effective for the spring-planted 1996 and subsequent crops, to be eligible for any payment or loan under the Agricultural Market Transition Act, the conservation reserve program, or any benefit described in section 371 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008f), a person shall—

"(i) obtain at least the catastrophic level of insurance for each crop of economic significance in which the person has an interest; or

"(ii) provide a written waiver to the Secretary that waives any eligibility for emergency crop loss assistance in connection with the crop.".

(b) COVERAGE OF SEED CROPS.—Section 519(a)(2)(B) of the Act (7 U.S.C. 1519(a)(2)(B) is amended by inserting "seed crops," after "turfgrass sod,".

SEC. 1402. COLLECTION AND USE OF AGRICULTURAL QUARANTINE AND INSPECTION FEES.

Subsection (a) of section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a) is amended to read as follows:

"(a) QUARANTINE AND INSPECTION FEES.—

"(1) FEES AUTHORIZED.—The Secretary of Agriculture may prescribe and collect fees sufficient—

"(A) to cover the cost of providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car;

"(B) to cover the cost of administering this subsection; and

"(C) through fiscal year 2002, to maintain a reasonable balance in the Agricultural Quarantine Inspection User Fee Account established under paragraph (5).

"(2) LIMITATION.—In setting the fees under paragraph (1), the Secretary shall ensure that the amount of the fees are commensurate with the costs of agricultural quarantine and inspection services with respect to the class of persons or entities paying the fees. The costs of the services with respect to passengers as a class includes the costs of related inspections of the aircraft or other vehicle.

"(3) STATUS OF FEES.—Fees collected under this subsection by any person on behalf of the Secretary are held in trust for the United States and shall be remitted to the Secretary in such manner and at such times as the Secretary may prescribe.

"(4) LATE PAYMENT PENALTIES.—If a person subject to a fee under this subsection fails to pay the fee when due, the Secretary shall assess a late payment penalty, and the overdue fees shall accrue interest, as required by section 3717 of title 31, United States Code.

"(5) AGRICULTURAL QUARANTINE INSPECTION USER FEE ACCOUNT.—

"(A) ESTABLISHMENT.—There is established in the Treasury of the United States a no-year fund, to be known as the 'Agricultural Quarantine Inspection User Fee Account', which shall contain all of the fees collected under this subsection and late payment penalties and interest charges collected under paragraph (4) through fiscal year 2002.

"(B) USE OF ACCOUNT.—For each of the fiscal years 1996 through 2002, funds in the Agricultural Quarantine Inspection User Fee Account shall be available, in such amounts as are provided in advance in appropriations Acts, to cover the costs associated with the provision of agricultural quarantine and inspection services and the administration of this subsection. Amounts made available under this subparagraph shall be available until expended.

"(C) EXCESS FEES.—Fees and other amounts collected under this subsection in any of the fiscal years 1996 through 2002 in excess of $100,000,000 shall be available for the purposes specified in subparagraph (B) until expended, without further appropriation.

"(6) USE OF AMOUNTS COLLECTED AFTER FISCAL YEAR 2002.—After September 30, 2002, the unobligated balance in the Agricultural Quarantine Inspection User Fee Account and fees and other amounts collected under this subsection shall be cred-

ited to the Department of Agriculture accounts that incur the costs associated with the provision of agricultural quarantine and inspection services and the administration of this subsection. The fees and other amounts shall remain available to the Secretary until expended without fiscal year limitation.

"(7) STAFF YEARS.—The number of full-time equivalent positions in the Department of Agriculture attributable to the provision of agricultural quarantine and inspection services and the administration of this subsection shall not be counted toward the limitation on the total number of full-time equivalent positions in all agencies specified in section 5(b) of the Federal Workforce Restructuring Act of 1994 (Public Law 103–226; 5 U.S.C. 3101 note) or other limitation on the total number of full-time equivalent positions.".

SEC. 1403. COMMODITY CREDIT CORPORATION INTEREST RATE.

Notwithstanding any other provision of law, the monthly Commodity Credit Corporation interest rate applicable to loans provided for agricultural commodities by the Corporation shall be 100 basis points greater than the rate determined under the applicable interest rate formula in effect on October 1, 1995.

TITLE II—BANKING, HOUSING, AND RELATED PROVISIONS

SEC. 2001. TABLE OF CONTENTS.

The table of contents for this title is as follows:

TITLE II—BANKING, HOUSING, AND RELATED PROVISIONS

Subtitle A—Financial Institutions

SEC. 2011. SPECIAL ASSESSMENT TO CAPITALIZE SAIF.

(a) IN GENERAL.—Except as provided in subsection (f), the Board of Directors shall impose a special assessment on the SAIF-assessable deposits of each insured depository institution at a rate applicable to all such institutions that the Board of Directors, in its sole discretion, determines (after taking into account the adjustments described in subsections (g) through (j)) will cause the Savings Association Insurance Fund to achieve the designated reserve ratio on the first business day of January 1996.

(b) FACTORS TO BE CONSIDERED.—In carrying out subsection (a), the Board of Directors shall base its determination on—

(1) the monthly Savings Association Insurance Fund balance most recently calculated;

(2) data on insured deposits reported in the most recent reports of condition filed not later than 70 days before the date of enactment of this Act by insured depository institutions; and

(3) any other factors that the Board of Directors deems appropriate.

(c) DATE OF DETERMINATION.—For purposes of subsection (a), the amount of the SAIF-assessable deposits of an insured depository institution shall be determined as of March 31, 1995.

(d) DATE PAYMENT DUE.—The special assessment imposed under this section shall be—

(1) due on the first business day of January 1996; and

(2) paid to the Corporation on the later of—

(A) the first business day of January 1996; or

(B) such other date as the Corporation shall prescribe, but not later than 60 days after the date of enactment of this Act.

(e) ASSESSMENT DEPOSITED IN SAIF.—Notwithstanding any other provision of law, the proceeds of the special assessment imposed under this section shall be deposited in the Savings Association Insurance Fund.

(f) EXEMPTIONS FOR CERTAIN INSTITUTIONS.—

(1) EXEMPTION FOR WEAK INSTITUTIONS.—The Board of Directors may, by order, in its sole discretion, exempt any insured depository institution that the Board of Directors determines to be weak, from paying the special assessment imposed under this section if the Board of Directors determines that the exemption would reduce risk to the Savings Association Insurance Fund.

(2) GUIDELINES REQUIRED.—Not later than 30 days after the date of enactment of this Act, the Board of Directors shall prescribe guidelines setting forth the criteria that the Board of Directors will use in exempting institutions under paragraph (1). Such guidelines shall be published in the Federal Register.

(3) EXEMPTION FOR CERTAIN NEWLY CHARTERED AND OTHER DEFINED INSTITUTIONS.—

(A) IN GENERAL.—In addition to the institutions exempted from paying the special assessment under paragraph (1), the Board of Directors shall exempt any insured depository institution from payment of the special assessment if the institution—

(i) was in existence on October 1, 1995, and held no SAIF-assessable deposits prior to January 1, 1993;

(ii) is a Federal savings bank which—

(I) was established de novo in April 1994 in order to acquire the deposits of a savings association which was in default or in danger of default; and

(II) received minority interim capital assistance from the Resolution Trust Corporation under section 21A(w) of the Federal Home Loan Bank Act in connection with the acquisition of any such savings association; or

(iii) is a savings association, the deposits of which are insured by the Savings Association Insurance Fund, which—

(I) prior to January 1, 1987, was chartered as a Federal savings bank insured by the Federal Savings and Loan Insurance Corporation for the purpose of acquiring all or substantially all of the assets and assuming all or substantially all of the deposit liabilities of a national bank in a transaction consummated after July 1, 1986; and

(II) as of the date of that transaction, had assets of less than $150,000,000.

(B) DEFINITION.—For purposes of this paragraph, an institution shall be deemed to have held SAIF-assessable deposits prior to January 1, 1993, if—

(i) it directly held SAIF-assessable insured deposits prior to that date; or

(ii) it succeeded to, acquired, purchased, or otherwise holds any SAIF-assessable deposits as of the date of enactment of this Act that were SAIF-assessable deposits prior to January 1, 1993.

(4) EXEMPT INSTITUTIONS REQUIRED TO PAY ASSESSMENTS AT FORMER RATES.—

(A) PAYMENTS TO SAIF AND DIF.—Any insured depository institution that the Board of Directors exempts under this subsection from paying the special assessment imposed under this section shall pay semiannual assessments—

(i) during calendar years 1996 and 1997, into the Savings Association Insurance Fund, based on SAIF-assessable deposits of that institution, at assessment rates calculated under the schedule in effect for Savings Association Insurance Fund members on June 30, 1995; and

(ii) during calendar years 1998 and 1999—

(I) into the Deposit Insurance Fund, based on SAIF-assessable deposits of that institution as of December 31, 1997, at assessment rates calculated

under the schedule in effect for Savings Association Insurance Fund members on June 30, 1995; or

(II) in accordance with clause (i), if the Bank Insurance Fund and the Savings Association Insurance Fund are not merged into the Deposit Insurance Fund.

(B) OPTIONAL PRO RATA PAYMENT OF SPECIAL ASSESSMENT.—This paragraph shall not apply with respect to any insured depository institution (or successor insured depository institution) that has paid, during any calendar year from 1997 through 1999, upon such terms as the Corporation may announce, an amount equal to the product of—

(i) 12.5 percent of the special assessment that the institution would have been required to pay under subsection (a), if the Board of Directors had not exempted the institution; and

(ii) the number of full semiannual periods remaining between the date of the payment and December 31, 1999.

(g) SPECIAL ELECTION FOR CERTAIN INSTITUTIONS FACING HARDSHIP AS A RESULT OF THE SPECIAL ASSESSMENT.—

(1) ELECTION AUTHORIZED.—If—

(A) an insured depository institution, or any depository institution holding company which, directly or indirectly, controls such institution, is subject to terms or covenants in any debt obligation or preferred stock outstanding on September 13, 1995; and

(B) the payment of the special assessment under subsection (a) would pose a significant risk of causing such depository institution or holding company to default or violate any such term or covenant,

the depository institution may elect, with the approval of the Corporation, to pay such special assessment in accordance with paragraphs (2) and (3) in lieu of paying such assessment in the manner required under subsection (a).

(2) 1ST ASSESSMENT.—An insured depository institution which makes an election under paragraph (1) shall pay an assessment of 50 percent of the amount of the special assessment that would otherwise apply under subsection (a), by the date on which such special assessment is otherwise due under subsection (d).

(3) 2D ASSESSMENT.—An insured depository institution which makes an election under paragraph (1) shall pay a 2d assessment, by the date established by the Board of Directors in accordance with paragraph (4), in an amount equal to the product of 51 percent of the rate determined by the Board of Directors under subsection (a) for determining the amount of the special assessment and the SAIF-assessable deposits of the institution on March 31, 1996, or such other date in calendar year 1996 as the Board of Directors determines to be appropriate.

(4) DUE DATE OF 2D ASSESSMENT.—The date established by the Board of Directors for the payment of the assessment under paragraph (3) by a depository institution shall be the earliest

practicable date which the Board of Directors determines to be appropriate, which is at least 15 days after the date used by the Board of Directors under paragraph (3).

(5) SUPPLEMENTAL SPECIAL ASSESSMENT.—An insured depository institution which makes an election under paragraph (1) shall pay a supplemental special assessment, at the same time the payment under paragraph (3) is made, in an amount equal to the product of—

(A) 50 percent of the rate determined by the Board of Directors under subsection (a) for determining the amount of the special assessment; and

(B) 95 percent of the amount by which the SAIF-assessable deposits used by the Board of Directors for determining the amount of the 1st assessment under paragraph (2) exceeds, if any, the SAIF-assessable deposits used by the Board for determining the amount of the 2d assessment under paragraph (3).

(h) ADJUSTMENT OF SPECIAL ASSESSMENT FOR CERTAIN BANK INSURANCE FUND MEMBER BANKS.—

(1) IN GENERAL.—For purposes of computing the special assessment imposed under this section with respect to a Bank Insurance Fund member bank, the amount of any deposits of any insured depository institution which section 5(d)(3) of the Federal Deposit Insurance Act treats as insured by the Savings Association Insurance Fund shall be reduced by 20 percent—

(A) if the adjusted attributable deposit amount of the Bank Insurance Fund member bank is less than 50 percent of the total domestic deposits of that member bank as of June 30, 1995; or

(B) if, as of June 30, 1995, the Bank Insurance Fund member—

(i) had an adjusted attributable deposit amount equal to less than 75 percent of the total assessable deposits of that member bank;

(ii) had total assessable deposits greater than $5,000,000,000; and

(iii) was owned or controlled by a bank holding company that owned or controlled insured depository institutions having an aggregate amount of deposits insured or treated as insured by the Bank Insurance Fund greater than the aggregate amount of deposits insured or treated as insured by the Savings Association Insurance Fund.

(2) ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—For purposes of this subsection, the "adjusted attributable deposit amount" shall be determined in accordance with section 5(d)(3)(C) of the Federal Deposit Insurance Act.

(i) ADJUSTMENT TO THE ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT FOR CERTAIN BANK INSURANCE FUND MEMBER BANKS.—Section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)) is amended—

(1) in subparagraph (C), by striking "The adjusted attributable deposit amount" and inserting "Except as provided in

subparagraph (K), the adjusted attributable deposit amount''; and

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

''(K) ADJUSTMENT OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—The amount determined under subparagraph (C)(i) for deposits acquired by March 31, 1995, shall be reduced by 20 percent for purposes of computing the adjusted attributable deposit amount for the payment of any assessment for any semiannual period after December 31, 1995 (other than the special assessment imposed under section 2011(a) of the Balanced Budget Act of 1995), for a Bank Insurance Fund member bank that, as of June 30, 1995—

''(i) had an adjusted attributable deposit amount that was less than 50 percent of the total deposits of that member bank; or

''(ii)(I) had an adjusted attributable deposit amount equal to less than 75 percent of the total assessable deposits of that member bank;

''(II) had total assessable deposits greater than $5,000,000,000; and

''(III) was owned or controlled by a bank holding company that owned or controlled insured depository institutions having an aggregate amount of deposits insured or treated as insured by the Bank Insurance Fund greater than the aggregate amount of deposits insured or treated as insured by the Savings Association Insurance Fund.''.

(j) ADJUSTMENT OF SPECIAL ASSESSMENT FOR CERTAIN SAVINGS ASSOCIATIONS.—

(1) SPECIAL ASSESSMENT REDUCTION.—For purposes of computing the special assessment imposed under this section, in the case of any converted association, the amount of any deposits of such association which were insured by the Savings Association Insurance Fund as of March 31, 1995, shall be reduced by 20 percent.

(2) CONVERTED ASSOCIATION.—For purposes of this subsection, the term ''converted association'' means—

(A) any Federal savings association—

(i) that is a member of the Savings Association Insurance Fund and that has deposits subject to assessment by that fund which did not exceed $4,000,000,000, as of March 31, 1995; and

(ii) that had been, or is a successor by merger, acquisition, or otherwise to an institution that had been, a State savings bank, the deposits of which were insured by the Federal Deposit Insurance Corporation prior to August 9, 1989, that converted to a Federal savings association pursuant to section 5(i) of the Home Owners' Loan Act prior to January 1, 1985;

(B) a State depository institution that is a member of the Savings Association Insurance Fund that had been a State savings bank prior to October 15, 1982, and was a Federal savings association on August 9, 1989;

(C) an insured bank that—

(i) was established de novo in order to acquire the deposits of a savings association in default or in danger of default;

(ii) did not open for business before acquiring the deposits of such savings association; and

(iii) was a Savings Association Insurance Fund member as of the date of enactment of this Act; and

(D) an insured bank that—

(i) resulted from a savings association before December 19, 1991, in accordance with section 5(d)(2)(G) of the Federal Deposit Insurance Act; and

(ii) had an increase in its capital in conjunction with the conversion in an amount equal to more than 75 percent of the capital of the institution on the day before the date of the conversion.

SEC. 2012. FINANCING CORPORATION ASSESSMENTS SHARED PROPORTIONALLY BY ALL INSURED DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—Section 21 of the Federal Home Loan Bank Act (12 U.S.C. 1441) is amended—

(1) in subsection (f)(2)—

(A) in the matter immediately preceding subparagraph (A)—

(i) by striking "Savings Association Insurance Fund member" and inserting "insured depository institution"; and

(ii) by striking "members" and inserting "institutions"; and

(B) by striking ", except that—" and all that follows through the end of the paragraph and inserting ", except that—

"(A) the Financing Corporation shall have first priority to make the assessment; and

"(B) no limitation under clause (i) or (iii) of section 7(b)(2)(A) of the Federal Deposit Insurance Act shall apply for purposes of this paragraph."; and

(2) in subsection (k)—

(A) by striking "section—" and inserting "section, the following definitions shall apply:";

(B) by striking paragraph (1);

(C) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

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

"(3) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

(b) CONFORMING AMENDMENT.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on January 1, 1996.

SEC. 2013. MERGER OF BIF AND SAIF.

(a) IN GENERAL.—

(1) MERGER.—The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund established by section 11(a)(4) of the Federal Deposit Insurance Act, as amended by this section.

(2) DISPOSITION OF ASSETS AND LIABILITIES.—All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

(3) NO SEPARATE EXISTENCE.—The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease.

(b) SPECIAL RESERVE OF THE DEPOSIT INSURANCE FUND.—

(1) IN GENERAL.—Immediately before the merger of the Bank Insurance Fund and the Savings Association Insurance Fund, if the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which that reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Deposit Insurance Fund, established under section 11(a)(5) of the Federal Deposit Insurance Act, as amended by this section.

(2) DEFINITION.—For purposes of this subsection, the term "reserve ratio" means the ratio of the net worth of the Savings Association Insurance Fund to aggregate estimated insured deposits held in all Savings Association Insurance Fund members.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on January 1, 1998, if no insured depository institution is a savings association on that date.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEPOSIT INSURANCE FUND.—Section 11(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (C);

(B) by striking subparagraph (A) and inserting the following:

"(A) ESTABLISHMENT.—There is established the Deposit Insurance Fund, which the Corporation shall—

"(i) maintain and administer;

"(ii) use to carry out its insurance purposes in the manner provided by this subsection; and

"(iii) invest in accordance with section 13(a).

"(B) USES.—The Deposit Insurance Fund shall be available to the Corporation for use with respect to Deposit Insurance Fund members."; and

(C) by striking "(4) GENERAL PROVISIONS RELATING TO FUNDS.—" and inserting the following:

"(4) ESTABLISHMENT OF THE DEPOSIT INSURANCE FUND.—".

(2) OTHER REFERENCES.—Section 11(a)(4)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(C), as redesignated by paragraph (1) of this subsection) is amended by striking "Bank Insurance Fund and the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund".

(3) DEPOSITS INTO FUND.—Section 11(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)) is amended by adding at the end the following new subparagraph:

"(D) DEPOSITS.—All amounts assessed against insured depository institutions by the Corporation shall be deposited in the Deposit Insurance Fund.".

(4) SPECIAL RESERVE OF DEPOSITS.—Section 11(a)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(5)) is amended to read as follows:

"(5) SPECIAL RESERVE OF DEPOSIT INSURANCE FUND.—

"(A) ESTABLISHMENT.—

"(i) IN GENERAL.—There is established a Special Reserve of the Deposit Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 13(a).

"(ii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve.

"(B) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding subparagraph (A)(ii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve to the Deposit Insurance Fund, for the purposes set forth in paragraph (4), only if—

"(i) the reserve ratio of the Deposit Insurance Fund is less than 50 percent of the designated reserve ratio; and

"(ii) the Corporation expects the reserve ratio of the Deposit Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

"(C) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve shall be excluded in calculating the reserve ratio of the Deposit Insurance Fund under section 7.".

(5) FEDERAL HOME LOAN BANK ACT.—Section 21B(f)(2)(C)(ii) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)(ii)) is amended—

(A) in subclause (I), by striking "to Savings Associations Insurance Fund members" and inserting "to insured depository institutions, and their successors, which were Savings Association Insurance Fund members on September 1, 1995"; and

(B) in subclause (II), by striking "to Savings Associations Insurance Fund members" and inserting "to insured depository institutions, and their successors, which were Savings Association Insurance Fund members on September 1, 1995".

(6) REPEALS.—

(A) SECTION 3.—Section 3(y) of the Federal Deposit Insurance Act (12 U.S.C. 1813(y)) is amended to read as follows:

"(y) DEFINITIONS RELATING TO THE DEPOSIT INSURANCE FUND.—The term

"(1) DEPOSIT INSURANCE FUND.—The term 'Deposit Insurance Fund' means the fund established under section 11(a)(4).

"(2) RESERVE RATIO.—The term 'reserve ratio' means the ratio of the net worth of the Deposit Insurance Fund to aggregate estimated insured deposits held in all insured depository institutions.

"(3) DESIGNATED RESERVE RATIO.—The designated reserve ratio of the Deposit Insurance Fund for each year shall be—

"(A) 1.25 percent of estimated insured deposits; or

"(B) a higher percentage of estimated insured deposits that the Board of Directors determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the fund.

(B) SECTION 7.—Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(i) by striking subsection (l);

(ii) by redesignating subsections (m) and (n) as subsections (l) and (m), respectively;

(iii) in subsection (b)(2), by striking subparagraphs (B) and (F), and by redesignating subparagraphs (C), (E), (G), and (H) as subparagraphs (B) through (E), respectively.

(C) SECTION 11.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended—

(i) by striking paragraphs (6) and (7); and

(ii) by redesignating paragraph (8) as paragraph (6).

(7) SECTION 5136 OF THE REVISED STATUTES.—Paragraph Eleventh of section 5136 of the Revised Statutes (12 U.S.C. 24) is amended in the fifth sentence, by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund".

(8) INVESTMENTS PROMOTING PUBLIC WELFARE; LIMITATIONS ON AGGREGATE INVESTMENTS.—The 23d undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338a) is amended in the fourth sentence, by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund".

(9) ADVANCES TO CRITICALLY UNDERCAPITALIZED DEPOSITORY INSTITUTIONS.—Section 10B(b)(3)(A)(ii) of the Federal Reserve Act (12 U.S.C. 347b(b)(3)(A)(ii)) is amended by striking "any deposit insurance fund in" and inserting "the Deposit Insurance Fund of".

(10) AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended—

(A) by striking "Bank Insurance Fund" and inserting "Deposit Insurance Fund"; and

(B) by striking "Federal Deposit Insurance Corporation, Savings Association Insurance Fund;".

(11) FURTHER AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended—

(A) in section 11(k) (12 U.S.C. 1431(k))—

(i) in the subsection heading, by striking "SAIF" and inserting "THE DEPOSIT INSURANCE FUND"; and

(ii) by striking "Savings Association Insurance Fund" each place such term appears and inserting "Deposit Insurance Fund";

(B) in section 21A(b)(4)(B) (12 U.S.C. 1441a(b)(4)(B)), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

(C) in section 21A(b)(6)(B) (12 U.S.C. 1441a(b)(6)(B))—

(i) in the subparagraph heading, by striking "SAIF-INSURED BANKS" and inserting "CHARTER CONVERSIONS"; and

(ii) by striking "Savings Association Insurance Fund member" and inserting "savings association";

(D) in section 21A(b)(10)(A)(iv)(II) (12 U.S.C. 1441a(b)(10)(A)(iv)(II)), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(E) in section 21B(e) (12 U.S.C. 1441b(e))—

(i) in paragraph (5), by inserting "as of the date of funding" after "Savings Association Insurance Fund members" each place such term appears;

(ii) by striking paragraph (7); and

(iii) by redesignating paragraph (8) as paragraph (7); and

(F) in section 21B(k) (12 U.S.C. 1441b(k))—

(i) by striking paragraph (8); and

(ii) by redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively.

(12) AMENDMENTS TO THE HOME OWNERS' LOAN ACT.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended—

(A) in section 5 (12 U.S.C. 1464)—

(i) in subsection (c)(5)(A), by striking "that is a member of the Bank Insurance Fund";

(ii) in subsection (c)(6), by striking "As used in this subsection—" and inserting "For purposes of this subsection, the following definitions shall apply:";

(iii) in subsection (o)(1), by striking "that is a Bank Insurance Fund member";

(iv) in subsection (o)(2)(A), by striking "a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member" and inserting "insured by the Deposit Insurance Fund";

(v) in subsection (t)(5)(D)(iii)(II), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

(vi) in subsection (t)(7)(C)(i)(I), by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund"; and

(vii) in subsection (v)(2)(A)(i), by striking ", the Savings Association Insurance Fund" and inserting "or the Deposit Insurance Fund"; and

(B) in section 10 (12 U.S.C. 1467a)—

(i) in subsection (e)(1)(A)(iii)(VII), by adding "or" at the end;

(ii) in subsection (e)(1)(A)(iv), by adding "and" at the end;

(iii) in subsection (e)(1)(B), by striking "Savings Association Insurance Fund or Bank Insurance Fund" and inserting "Deposit Insurance Fund";

(iv) in subsection (e)(2), by striking "Savings Association Insurance Fund or the Bank Insurance Fund" and inserting "Deposit Insurance Fund"; and

(v) in subsection (m)(3), by striking subparagraph (E), and by redesignating subparagraphs (F), (G), and (H) as subparagraphs (E), (F), and (G), respectively.

(13) AMENDMENTS TO THE NATIONAL HOUSING ACT.—The National Housing Act (12 U.S.C. 1701 et seq.) is amended—

(A) in section 317(b)(1)(B) (12 U.S.C. 1723i(b)(1)(B)), by striking "Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations" and inserting "Deposit Insurance Fund"; and

(B) in section 526(b)(1)(B)(ii) (12 U.S.C. 1735f–14(b)(1)(B)(ii)), by striking "Bank Insurance Fund for banks and through the Savings Association Insurance Fund for savings associations" and inserting "Deposit Insurance Fund".

(14) FURTHER AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(A) in section 3(a)(1) (12 U.S.C. 1813(a)(1)), by striking subparagraph (B) and inserting the following:

"(B) includes any former savings association.";

(B) in section 5(b)(5) (12 U.S.C. 1815(b)(5)), by striking "the Bank Insurance Fund or the Savings Association Insurance Fund;" and inserting "Deposit Insurance Fund,";

(C) in section 5(d) (12 U.S.C. 1815(d)), by striking paragraphs (2) and (3);

(D) in section 5(d)(1) (12 U.S.C. 1815(d)(1))—

(i) in subparagraph (A), by striking "reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund" and inserting "the reserve ratio of the Deposit Insurance Fund";

(ii) by striking subparagraph (B) and inserting the following:

"(2) FEE CREDITED TO THE DEPOSIT INSURANCE FUND.—The fee paid by the depository institution under paragraph (1) shall be credited to the Deposit Insurance Fund.";

(iii) by striking "(1) UNINSURED INSTITUTIONS.—"; and

(iv) by redesignating subparagraphs (A) and (C) as paragraphs (1) and (3), respectively, and moving the margins 2 ems to the left;

(E) in section 5(e) (12 U.S.C. 1815(e))—

(i) in paragraph (5)(A), by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(ii) by striking paragraph (6); and

(iii) by redesignating paragraphs (7), (8), and (9) as paragraphs (6), (7), and (8), respectively;

(F) in section 6(5) (12 U.S.C. 1816(5)), by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(G) in section 7(b) (12 U.S.C. 1817(b))—

(i) in paragraph (1)(D), by striking "each deposit insurance fund" and inserting "the Deposit Insurance Fund";

(ii) in clauses (i)(I) and (iv) of paragraph (2)(A), by striking "each deposit insurance fund" each place such term appears and inserting "the Deposit Insurance Fund";

(iii) in paragraph (2)(A)(iii), by striking "a deposit insurance fund" and inserting "the Deposit Insurance Fund";

(iv) by striking clause (iv) of paragagraph (2)(A);

(v) in paragraph (2)(C) (as redesignated by paragraph (6)(B) of this subsection)—

(I) by striking "any deposit insurance fund" and inserting "the Deposit Insurance Fund"; and

(II) by striking "that fund" each place such term appears and inserting "the Deposit Insurance Fund";

(vi) in paragraph (2)(D) (as redesignated by paragraph (6)(B) of this subsection)—

(I) in the subparagraph heading, by striking "FUNDS ACHIEVE" and inserting "FUND ACHIEVES"; and

(II) by striking "a deposit insurance fund" and inserting "the Deposit Insurance Fund";

(vii) in paragraph (3)—

(I) in the paragraph heading, by striking "FUNDS" and inserting "FUND";

(II) by striking "that fund" each place such term appears and inserting "the Deposit Insurance Fund";

(III) in subparagraph (A), by striking "Except as provided in paragraph (2)(F), if" and inserting "If";

(IV) in subparagraph (A), by striking "any deposit insurance fund" and inserting "the Deposit Insurance Fund"; and

(V) by striking subparagraphs (C) and (D) and inserting the following:

"(C) AMENDING SCHEDULE.—The Corporation may, by regulation, amend a schedule promulgated under subparagraph (B)."; and

(viii) in paragraph (6)—

(I) by striking "any such assessment" and inserting "any such assessment is necessary";

(II) by striking "(A) is necessary—";

(III) by striking subparagraph (B);

(IV) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively, and moving the margins 2 ems to the left; and

(V) in subparagraph (C) (as redesignated), by striking "; and" and inserting a period;

(H) in section 11(f)(1) (12 U.S.C. 1821(f)(1)), by striking ", except that—" and all that follows through the end of the paragraph and inserting a period;

(I) in section 11(i)(3) (12 U.S.C. 1821(i)(3))—

(i) by striking subparagraph (B);

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

(iii) in subparagraph (B) (as redesignated), by striking "subparagraphs (A) and (B)" and inserting "subparagraph (A)";

(J) in section 11A(a) (12 U.S.C. 1821a(a))—

(i) in paragraph (2), by striking "LIABILITIES.—" and all that follows through "Except" and inserting "LIABILITIES.—Except";

(ii) by striking paragraph (2)(B); and

(iii) in paragraph (3), by striking "the Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "the Deposit Insurance Fund";

(K) in section 11A(b) (12 U.S.C. 1821a(b)), by striking paragraph (4);

(L) in section 11A(f) (12 U.S.C. 1821a(f)), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(M) in section 13 (12 U.S.C. 1823)—

(i) in subsection (a)(1), by striking "Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "Deposit Insurance Fund, the Special Reserve of the Deposit Insurance Fund,";

(ii) in subsection (c)(4)(E)—

(I) in the subparagraph heading, by striking "FUNDS" and inserting "FUND"; and

(II) in clause (i), by striking "any insurance fund" and inserting "the Deposit Insurance Fund";

(iii) in subsection (c)(4)(G)(ii)—

(I) by striking "appropriate insurance fund" and inserting "Deposit Insurance Fund";

(II) by striking "the members of the insurance fund (of which such institution is a member)" and inserting "insured depository institutions";

(III) by striking "each member's" and inserting "each insured depository institution's"; and

(IV) by striking "the member's" each place such term appears and inserting "the institution's";

(iv) in subsection (c), by striking paragraph (11);

(v) in subsection (h), by striking "Bank Insurance Fund" and inserting "Deposit Insurance Fund";

(vi) in subsection (k)(4)(B)(i), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund"; and

(vii) in subsection (k)(5)(A), by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(N) in section 14(a) (12 U.S.C. 1824(a)) in the fifth sentence—

(i) by striking "Bank Insurance Fund or the Savings Association Insurance Fund" and inserting "Deposit Insurance Fund"; and

(ii) by striking "each such fund" and inserting "the Deposit Insurance Fund";

(O) in section 14(b) (12 U.S.C. 1824(b)), by striking "Bank Insurance Fund or Savings Association Insurance Fund" and inserting "Deposit Insurance Fund";

(P) in section 14(c) (12 U.S.C. 1824(c)), by striking paragraph (3);

(Q) in section 14(d) (12 U.S.C. 1824(d))—

(i) by striking "BIF" each place such term appears and inserting "DIF"; and

(ii) by striking "Bank Insurance Fund" each place such term appears and inserting "Deposit Insurance Fund";

(R) in section 15(c)(5) (12 U.S.C. 1825(c)(5))—

(i) by striking "the Bank Insurance Fund or Savings Association Insurance Fund, respectively" each place such term appears and inserting "the Deposit Insurance Fund"; and

(ii) in subparagraph (B), by striking "the Bank Insurance Fund or the Savings Association Insurance Fund, respectively" and inserting "the Deposit Insurance Fund";

(S) in section 17(a) (12 U.S.C. 1827(a))—

(i) in the subsection heading, by striking "BIF, SAIF," and inserting "THE DEPOSIT INSURANCE FUND"; and

(ii) in paragraph (1), by striking "the Bank Insurance Fund, the Savings Association Insurance Fund," each place such term appears and inserting "the Deposit Insurance Fund";

(T) in section 17(d) (12 U.S.C. 1827(d)), by striking "the Bank Insurance Fund, the Savings Association Insurance Fund," each place such term appears and inserting "the Deposit Insurance Fund";

(U) in section 18(m)(3) (12 U.S.C. 1828(m)(3))—

(i) by striking "Savings Association Insurance Fund" each place such term appears and inserting "Deposit Insurance Fund"; and

(ii) in subparagraph (C), by striking "or the Bank Insurance Fund";

(V) in section 18(p) (12 U.S.C. 1828(p)), by striking "deposit insurance funds" and inserting "Deposit Insurance Fund";

(W) in section 24 (12 U.S.C. 1831a) in subsections (a)(1) and (d)(1)(A), by striking "appropriate deposit insur-

ance fund" each place such term appears and inserting "Deposit Insurance Fund";

(X) in section 28 (12 U.S.C. 1831e), by striking "affected deposit insurance fund" each place such term appears and inserting "Deposit Insurance Fund";

(Y) by striking section 31 (12 U.S.C. 1831h);

(Z) in section 36(i)(3) (12 U.S.C. 1831m(i)(3)) by striking "affected deposit insurance fund" and inserting "Deposit Insurance Fund";

(AA) in section 38(a) (12 U.S.C. 1831o(a)) in the subsection heading, by striking "FUNDS" and inserting "FUND";

(BB) in section 38(k) (12 U.S.C. 1831o(k))—

(i) in paragraph (1), by striking "a deposit insurance fund" and inserting "the Deposit Insurance Fund"; and

(ii) in paragraph (2)(A)—

(I) by striking "A deposit insurance fund" and inserting "The Deposit Insurance Fund"; and

(II) by striking "the deposit insurance fund's outlays" and inserting "the outlays of the Deposit Insurance Fund"; and

(CC) in section 38(o) (12 U.S.C. 1831o(o))—

(i) by striking "ASSOCIATIONS.—" and all that follows through "Subsections (e)(2)" and inserting "ASSOCIATIONS.—Subsections (e)(2)";

(ii) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively, and moving the margins 2 ems to the left; and

(iii) in paragraph (1) (as redesignated), by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and moving the margins 2 ems to the left.

(15) AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.—The Financial Institutions Reform, Recovery, and Enforcement Act (Public Law 101–73; 103 Stat. 183) is amended—

(A) in section 951(b)(3)(B) (12 U.S.C. 1833a(b)(3)(B)), by striking "Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "Deposit Insurance Fund"; and

(B) in section 1112(c)(1)(B) (12 U.S.C. 3341(c)(1)(B)), by striking "Bank Insurance Fund, the Savings Association Insurance Fund," and inserting "Deposit Insurance Fund".

(16) AMENDMENT TO THE BANK ENTERPRISE ACT OF 1991.—Section 232(a)(1) of the Bank Enterprise Act of 1991 (12 U.S.C. 1834(a)(1)) is amended by striking "section 7(b)(2)(H)" and inserting "section 7(b)(2)(G)".

(17) AMENDMENT TO THE BANK HOLDING COMPANY ACT.—Section 2(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(j)(2)) is amended by striking "Savings Association Insurance Fund" and inserting "Deposit Insurance Fund".

SEC. 2014. CREATION OF SAIF SPECIAL RESERVE.

Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by adding at the end the following new subparagraph:

"(L) ESTABLISHMENT OF SAIF SPECIAL RESERVE.—

"(i) ESTABLISHMENT.—If, on January 1, 1998, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, there is established a Special Reserve of the Savings Association Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 13(a).

"(ii) AMOUNTS IN SPECIAL RESERVE.—If, on January 1, 1998, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which the reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Savings Association Insurance Fund established by clause (i).

"(iii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve of the Savings Association Insurance Fund.

"(iv) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding clause (iii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve of the Savings Association Insurance Fund to the Savings Association Insurance Fund for the purposes set forth in paragraph (4), only if—

"(I) the reserve ratio of the Savings Association Insurance Fund is less than 50 percent of the designated reserve ratio; and

"(II) the Corporation expects the reserve ratio of the Savings Association Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

"(v) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve of the Savings Association Insurance Fund shall be excluded in calculating the reserve ratio of the Savings Association Insurance Fund.".

SEC. 2015. REFUND OF AMOUNTS IN DEPOSIT INSURANCE FUND IN EXCESS OF DESIGNATED RESERVE AMOUNT.

Subsection (e) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)) is amended to read as follows:

"(e) REFUNDS.—

"(1) OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

"(A) refund the amount of the excess payment to the insured depository institution; or

"(B) credit such excess amount toward the payment of subsequent semiannual assessments until such credit is exhausted.

"(2) BALANCE IN INSURANCE FUND IN EXCESS OF DESIGNATED RESERVE.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), if, as of the end of any semiannual assessment period, the amount of the actual reserves in—

"(i) the Bank Insurance Fund (until the merger of such fund into the Deposit Insurance Fund pursuant to section 2013 of the Balanced Budget Act of 1995); or

"(ii) the Deposit Insurance Fund (after the establishment of such fund),

exceeds the balance required to meet the designated reserve ratio applicable with respect to such fund, such excess amount shall be refunded to insured depository institutions by the Corporation on such basis as the Board of Directors determines to be appropriate, taking into account the factors considered under the risk-based assessment system.

"(B) REFUND NOT TO EXCEED PREVIOUS SEMIANNUAL ASSESSMENT.—The amount of any refund under this paragraph to any member of a deposit insurance fund for any semiannual assessment period may not exceed the total amount of assessments paid by such member to the insurance fund with respect to such period.

"(C) REFUND LIMITATION FOR CERTAIN INSTITUTIONS.—No refund may be made under this paragraph with respect to the amount of any assessment paid for any semiannual assessment period by any insured depository institution described in clause (v) of subsection (b)(2)(A).".

SEC. 2016. ASSESSMENT RATES FOR SAIF MEMBERS MAY NOT BE LESS THAN ASSESSMENT RATES FOR BIF MEMBERS.

Section 7(b)(2)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(E), as redesignated by section 2013(d)(6) of this Act) 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 adding at the end the following new clause:

"(iii) notwithstanding any other provision of this subsection, during the period beginning on the date of enactment of the Balanced Budget Act of 1995, and ending on January 1, 1998, the assessment rate for a Savings Association Insurance Fund member may not be less than the assessment rate for a Bank Insurance Fund member that poses a comparable risk to the deposit insurance fund.".

SEC. 2017. ASSESSMENTS AUTHORIZED ONLY IF NEEDED TO MAINTAIN THE RESERVE RATIO OF A DEPOSIT INSURANCE FUND.

(a) IN GENERAL.—Section 7(b)(2)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)(i)) is amended in the matter preceding subclause (I) by inserting "when necessary, and only to the extent necessary" after "insured depository institutions".

(b) LIMITATION ON ASSESSMENT.—Section 7(b)(2)(A)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)(iii)) is amended to read as follows:

"(iii) LIMITATION ON ASSESSMENT.—Except as provided in clause (v), the Board of Directors shall not set semiannual assessments with respect to a deposit insurance fund in excess of the amount needed—

"(I) to maintain the reserve ratio of the fund at the designated reserve ratio; or

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio.".

(c) EXCEPTION TO LIMITATION ON ASSESSMENTS.—Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)) is amended by adding at the end the following new clause:

"(v) EXCEPTION TO LIMITATION ON ASSESSMENTS.—The Board of Directors may set semiannual assessments in excess of the amount permitted under clauses (i) and (iii) with respect to insured depository institutions that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or are not well capitalized, as that term is defined in section 38.".

SEC. 2018. LIMITATION ON AUTHORITY OF OVERSIGHT BOARD TO CONTINUE TO EMPLOY MORE THAN 18 OFFICERS AND EMPLOYEES.

(a) IN GENERAL.—Section 21A(a) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)) is amended by adding at the end the following new paragraph:

"(17) PHASED-DOWN OPERATION OF OVERSIGHT BOARD FOLLOWING TERMINATION OF CORPORATION.—

"(A) TERMINATION OF AUTHORITY TO EMPLOY STAFF.—Except as provided in subparagraph (B), the authority of the Thrift Depositor Protection Oversight Board under paragraph (5) to establish officer and employee positions, to compensate officers and employees of the Board, and to provide other benefits for officers and employees of the Board shall terminate as of December 31, 1995.

"(B) LIMITED AUTHORITY FOR EMPLOYING STAFF.—The Thrift Depositor Protection Oversight Board may employ not more than 18 individuals, excluding any employee of any other department or agency utilized by the Board, to carry out the functions of the Board during the period beginning on January 1, 1996 and ending on May 1, 1996, other than employees whose employment is in the process of being terminated in accordance with subparagraph (C).

"(C) TERMINATION OF EMPLOYMENT OF ADDITIONAL EMPLOYEES REQUIRED TO BE COMMENCED.—The Thrift Depositor Protection Oversight Board shall commence terminating, not later than December 31, 1995, and in accordance with title 5, United States Code, and applicable regulations of the Office of Personnel Management, the employment of any employee of the Board whose continued employment by the Board after such date is inconsistent with the requirement of subparagraph (B).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 21A(a)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(5)) is amended in subparagraphs (B), (C), (D), and (E), by inserting "subject to paragraph (17)," after the closing parenthesis of the subparagraph designation in each such subparagraph.

SEC. 2019. DEFINITIONS.

For purposes of this subtitle—

(1) the term "Bank Insurance Fund" means the fund established pursuant to section (11)(a)(5)(A) of the Federal Deposit Insurance Act, as that section existed on the day before the date of enactment of this Act;

(2) the terms "Bank Insurance Fund member" and "Savings Association Insurance Fund member" have the same meanings as in section 7(l) of the Federal Deposit Insurance Act;

(3) the terms "bank", "Board of Directors", "Corporation", "insured depository institution", "Federal savings association", "savings association", "State savings bank", and "State depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act;

(4) the term "Deposit Insurance Fund" means the fund established under section 11(a)(4) of the Federal Deposit Insurance Act, as amended by section 2013(d) of this Act;

(5) the term "depository institution holding company" has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(6) the term "designated reserve ratio" has the same meaning as in section 7(b)(2)(A)(iv) of the Federal Deposit Insurance Act;

(7) the term "Savings Association Insurance Fund" means the fund established pursuant to section 11(a)(6)(A) of the Federal Deposit Insurance Act, as that section existed on the day before the date of enactment of this Act; and

(8) the term "SAIF-assessable deposit" means—

(A) a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act; and

(B) a deposit that section 5(d)(3) of the Federal Deposit Insurance Act treats as insured by the Savings Association Insurance Fund.

Subtitle B—Housing

SEC. 2051. ANNUAL ADJUSTMENT FACTORS FOR OPERATING COSTS ONLY; RESTRAINT ON RENT INCREASES.

(a) ANNUAL ADJUSTMENT FACTORS FOR OPERATING COSTS ONLY.—Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) is amended—

(1) by striking "(2)(A)" and inserting "(2)(A)(i)";

(2) by striking the second sentence and all that follows through the end of the subparagraph; and

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

"(ii) Each assistance contract under this section shall provide that—

"(I) if the maximum monthly rent for a unit in a new construction or substantial rehabilitation project to be adjusted using an annual adjustment factor exceeds 100 percent of the fair market rent for an existing dwelling unit in the market area, the Secretary shall adjust the rent using an operating costs factor that increases the rent to reflect increases in operating costs in the market area; and

"(II) if the owner of a unit in a project described in subclause (I) demonstrates that the adjusted rent determined under subclause (I) would not exceed the rent for an unassisted unit of similar quality, type, and age in the same market area, as determined by the Secretary, the Secretary shall use the otherwise applicable annual adjustment factor.".

(b) RESTRAINT ON SECTION 8 RENT INCREASES.—Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), as amended by subsection (a), is amended by adding at the end the following new clause:

"(iii)(I) Subject to subclause (II), with respect to any unit assisted under this section that is occupied by the same family at the time of the most recent annual rental adjustment, if the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor, and if the rent for the unit is otherwise eligible for an adjustment based on the full amount of the annual adjustment factor, 0.01 shall be subtracted from the amount of the annual adjustment factor, except that the annual adjustment factor shall not be reduced to less than 1.0.

"(II) With respect to any unit described in subclause (I) that is assisted under the certificate program, the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area in which the unit is located.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1995.

SEC. 2052. FORECLOSURE AVOIDANCE AND BORROWER ASSISTANCE.

(a) FORECLOSURE AVOIDANCE.—Except as provided in subsection (e), the last sentence of section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) is amended by inserting before the period the following: ": And provided further, That the Secretary may pay insurance benefits to the mortgagee to recompense the mortgagee for its actions to provide an alternative to foreclosure of a mortgage that is in default, which actions may include such actions as special forbearance, loan modification, and deeds in lieu of foreclosure, all upon such terms and conditions as the mortgagee shall determine in the mortgagee's sole discretion within guidelines provided by the Secretary, but which may not include assignment of a mortgage to the Secretary: And provided further, That for purposes of the preceding proviso, no action authorized by the Secretary and no action taken, nor any failure to act, by the Secretary or the mortgagee shall be subject to judicial review".

(b) AUTHORITY TO ASSIST MORTGAGORS IN DEFAULT.—Except as provided in subsection (e), section 230 of the National Housing Act (12 U.S.C. 1715u) is amended to read as follows:

"AUTHORITY TO ASSIST MORTGAGORS IN DEFAULT

"SEC. 230. (a) PAYMENT OF PARTIAL CLAIM.—The Secretary may establish a program for payment of a partial insurance claim to a mortgagee that agrees to apply the claim amount to payment of a mortgage on a 1- to 4-family residence that is in default. Any such payment under such program to the mortgagee shall be made in the Secretary's sole discretion and on terms and conditions acceptable to the Secretary, except that—

"(1) the amount of the payment shall be in an amount determined by the Secretary, which shall not exceed an amount equivalent to 12 monthly mortgage payments and any costs related to the default that are approved by the Secretary; and

"(2) the mortgagor shall agree to repay the amount of the insurance claim to the Secretary upon terms and conditions acceptable to the Secretary.

The Secretary may pay the mortgagee, from the appropriate insurance fund, in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.

"(b) ASSIGNMENT.—

"(1) PROGRAM AUTHORITY.—The Secretary may establish a program for assignment to the Secretary, upon request of the mortgagee, of a mortgage on a 1- to 4-family residence insured under this Act.

"(2) PROGRAM REQUIREMENTS.—The Secretary may accept assignment of a mortgage under a program under this subsection only if—

"(A) the mortgage was in default;

"(B) the mortgagee has modified the mortgage to cure the default and provide for mortgage payments within the reasonable ability of the mortgagor to pay at interest rates not exceeding current market interest rates; and

"(C) the Secretary arranges for servicing of the assigned mortgage by a mortgagee (which may include the assigning mortgagee) through procedures that the Secretary has determined to be in the best interests of the appropriate insurance fund.

"(3) PAYMENT OF INSURANCE BENEFITS.—Upon accepting assignment of a mortgage under the program under this subsection, the Secretary may pay insurance benefits to the mortgagee from the appropriate insurance fund in an amount that the Secretary determines to be appropriate, but which may not exceed the amount necessary to compensate the mortgagee for the assignment and any losses and expenses resulting from the mortgage modification.

"(c) PROHIBITION OF JUDICIAL REVIEW.—No decision by the Secretary to exercise or forego exercising any authority under this section shall be subject to judicial review.

"(d) SAVINGS PROVISION.—Any mortgage for which the mortgagor has applied to the Secretary, before the date of the enactment of the Balanced Budget Act of 1995, for assignment pursuant to subsection (b) of this section as in effect before such date of enact-

ment shall continue to be governed by the provisions of this section in effect immediately before such date of enactment.

"(e) APPLICABILITY OF OTHER LAWS.—No provision of this Act or any other law shall be construed to require the Secretary to provide an alternative to foreclosure for mortgagees with mortgages on 1- to 4-family residences insured by the Secretary under this Act, or to accept assignments of such mortgages.".

(c) APPLICABILITY OF AMENDMENTS.—Except as provided in subsection (e), the amendments made by subsections (a) and (b) shall apply only with respect to mortgages insured under the National Housing Act that are originated on or after October 1, 1995.

(d) REGULATIONS.—Not later than the expiration of the 60-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall issue interim regulations to implement this section and the amendments made by this section.

(e) EFFECTIVENESS AND APPLICABILITY.—If this Act is enacted after the date of the enactment of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996—

(1) subsections (a), (b), (c), and (d) of this section shall not take effect; and

(2) subsection (c) of the section relating to foreclosure avoidance and borrower assistance in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996, is amended by striking "only with respect to mortgages insured under the National Housing Act that are originated before October 1, 1995" and inserting "to mortgages originated before, on, and after October 1, 1995".

TITLE III—COMMUNICATIONS AND SPECTRUM ALLOCATION PROVISIONS

SEC. 3001. SPECTRUM AUCTIONS.

(a) EXTENSION AND EXPANSION OF AUCTION AUTHORITY.—

(1) AMENDMENTS.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(A) by striking paragraphs (1) and (2) and inserting the following:

"(1) GENERAL AUTHORITY.—If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then the Commission shall grant such license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

"(2) EXEMPTIONS.—The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—

"(A) that, as the result of the Commission carrying out the obligations described in paragraph (6)(E), are not mutually exclusive;

"(B) for public safety radio services, including non-Government uses the sole or principal purpose of which is to protect the safety of life, health, and property and which are not made commercially available to the public; or

"(C) for initial licenses or construction permits for new terrestrial digital television services assigned by the Commission to existing terrestrial broadcast licensees to replace their current television licenses, unless—

"(i) the Commission, not later than 180 days after the date of enactment of the Balanced Budget Act of 1995, after notice and public comment, submits to Congress a report on the use of the authority provided in this subsection for the assignment of initial licenses or construction permits for use of the electromagnetic spectrum allocated but not assigned as of the date of enactment of that Act for television broadcast services; and

"(ii) the Congress amends this subsection to authorize the use of the authority provided by this subsection for such licenses or permits.

Except as provided in this subparagraph, the Commission may not assign initial licenses or construction permits under this title to terrestrial commercial television broadcast licensees to replace their existing broadcast licenses before November 15, 1996."; and

(B) by striking "1998" in paragraph (11) and inserting "2002".

(2) CONFORMING AMENDMENT.—Subsection (i) of section 309 of such Act is repealed.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1)(A) shall not apply with respect to any license or permit for a terrestrial radio or television broadcast station for which the Federal Communications Commission has accepted mutually exclusive applications on or before the date of enactment of this Act.

(b) COMMISSION OBLIGATION TO MAKE ADDITIONAL SPECTRUM AVAILABLE BY AUCTION.—

(1) IN GENERAL.—The Federal Communications Commission shall complete all actions necessary to permit the assignment, by September 30, 2002, by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) of licenses for the use of bands of frequencies that—

(A) individually span not less than 25 megahertz, unless a combination of smaller bands can, notwithstanding the provisions of paragraph (7) of such section, reasonably be expected to produce greater receipts;

(B) in the aggregate span not less than 100 megahertz;

(C) are located below 3 gigahertz; and

(D) have not, as of the date of enactment of this Act—

(i) been designated by Commission regulation for assignment pursuant to such section;

(ii) been identified by the Secretary of Commerce pursuant to section 113 of the National Telecommuni-

cations and Information Administration Organization Act; or

(iii) been reserved for Federal Government use pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305).

The Commission shall conduct the competitive bidding for not less than one-half of such aggregate spectrum by September 30, 2000.

(2) CRITERIA FOR REASSIGNMENT.—In making available bands of frequencies for competitive bidding pursuant to paragraph (1), the Commission shall—

(A) seek to promote the most efficient use of the spectrum;

(B) take into account the cost to incumbent licensees of relocating existing uses to other bands of frequencies or other means of communication;

(C) take into account the needs of public safety radio services;

(D) comply with the requirements of international agreements concerning spectrum allocations; and

(E) take into account the costs to satellite service providers that could result from multiple auctions of like spectrum internationally for global satellite systems.

(3) NOTIFICATION TO NTIA.—The Commission shall notify the Secretary of Commerce if—

(A) the Commission is not able to provide for the effective relocation of incumbent licensees to bands of frequencies that are available to the Commission for assignment; and

(B) the Commission has identified bands of frequencies that are—

(i) suitable for the relocation of such licensees; and

(ii) allocated for Federal Government use, but that could be reallocated pursuant to part B of the National Telecommunications and Information Administration Organization Act (as amended by this section).

(c) IDENTIFICATION AND REALLOCATION OF FREQUENCIES.—The National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended—

(1) in section 113, by adding at the end the following new subsections:

"(f) ADDITIONAL REALLOCATION REPORT.—If the Secretary receives a notice from the Commission pursuant to section 3001(b)(3) of the Balanced Budget Act of 1995, the Secretary shall prepare and submit to the President and the Congress a report recommending for reallocation for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that are suitable for the uses identified in the Commission's notice.

"(g) RELOCATION OF FEDERAL GOVERNMENT STATIONS.—

"(1) IN GENERAL.—In order to expedite the efficient use of the electromagnetic spectrum and notwithstanding section 3302(b) of title 31, United States Code, any Federal entity which operates a Federal Government station may accept pay-

ment in advance or in-kind reimbursement of costs, or a combination of payment in advance and in-kind reimbursement, from any person to defray entirely the expenses of relocating the Federal entity's operations from one or more radio spectrum frequencies to another frequency or frequencies, including, without limitation, the costs of any modification, replacement, or reissuance of equipment, facilities, operating manuals, regulations, or other expenses incurred by that entity. Any such payment shall be deposited in the account of such Federal entity in the Treasury of the United States. Funds deposited according to this paragraph shall be available, without appropriation or fiscal year limitation, only for the operations of the Federal entity for which such funds were deposited under this paragraph.

"(2) PROCESS FOR RELOCATION.—Any person seeking to relocate a Federal Government station that has been assigned a frequency within a band allocated for mixed Federal and non-Federal use may submit a petition for such relocation to NTIA. The NTIA shall limit or terminate the Federal Government station's operating license when the following requirements are met:

"(A) the person seeking relocation of the Federal Government station has guaranteed to defray entirely, through payment in advance, in-kind reimbursement of costs, or a combination thereof, all relocation costs incurred by the Federal entity, including all engineering, equipment, site acquisition and construction, and regulatory fee costs;

"(B) the person seeking relocation completes all activities necessary for implementing the relocation, including construction of replacement facilities (if necessary and appropriate) and identifying and obtaining on the Federal entity's behalf new frequencies for use by the relocated Federal Government station (where such station is not relocating to spectrum reserved exclusively for Federal use);

"(C) any necessary replacement facilities, equipment modifications, or other changes have been implemented and tested to ensure that the Federal Government station is able to successfully accomplish its purposes; and

"(D) NTIA has determined that the proposed use of the spectrum frequency band to which the Federal entity will relocate its operations is—

"(i) consistent with obligations undertaken by the United States in international agreements and with United States national security and public safety interests; and

"(ii) suitable for the technical characteristics of the band and consistent with other uses of the band.

In exercising its authority under subparagraph (D)(i), NTIA shall consult with the Secretary of Defense, the Secretary of State, or other appropriate officers of the Federal Government.

"(3) RIGHT TO RECLAIM.—If within one year after the relocation the Federal Government station demonstrates to the Commission that the new facilities or spectrum are not comparable to the facilities or spectrum from which the Federal Government station was relocated, the person seeking such relocation must

take reasonable steps to remedy any defects or pay the Federal entity for the costs of returning the Federal Government station to the spectrum from which such station was relocated.

"(h) FEDERAL ACTION TO EXPEDITE SPECTRUM TRANSFER.—Any Federal Government station which operates on electromagnetic spectrum that has been identified for reallocation for mixed Federal and non-Federal use in any reallocation report under subsection (a) shall, to the maximum extent practicable through the use of the authority granted under subsection (g) and any other applicable provision of law, take action to relocate its spectrum use to other frequencies that are reserved for Federal use or to consolidate its spectrum use with other Federal Government stations in a manner that maximizes the spectrum available for non-Federal use. Subsection (c)(4) of this section shall not apply to the extent that a non-Federal user seeks to relocate or relocates a Federal power agency under subsection (g).

"(i) DEFINITION.—For purposes of this section, the term 'Federal entity' means any department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305)."; and

(2) in section 114(a)(1), by striking "(a) or (d)(1)" and inserting "(a), (d)(1), or (f)".

(d) IDENTIFICATION AND REALLOCATION OF AUCTIONABLE FREQUENCIES.—The National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended—

(1) in section 113(b)—

(A) by striking the heading of paragraph (1) and inserting "INITIAL REALLOCATION REPORT.—";

(B) by inserting "in the first report required by subsection (a)" after "recommend for reallocation" in paragraph (1);

(C) by inserting "or (3)" after "paragraph (1)" each place it appears in paragraph (2); and

(D) by inserting after paragraph (2) the following new paragraph:

"(3) SECOND REALLOCATION REPORT.—In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the second report required by subsection (a), for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), a single frequency band that spans not less than an additional 20 megahertz, that is located below 3 gigahertz, and that meets the criteria specified in paragraphs (1) through (5) of subsection (a)."; and

(2) in section 115—

(A) in subsection (b), by striking "the report required by section 113(a)" and inserting "the initial reallocation report required by section 113(a)"; and

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

"(c) ALLOCATION AND ASSIGNMENT OF FREQUENCIES IDENTIFIED IN THE SECOND REALLOCATION REPORT.—With respect to the frequencies made available for reallocation pursuant to section 113(b)(3), the Commission shall, not later than 1 year after receipt of the second reallocation report required by such section, prepare, submit to the President and the Congress, and implement, a plan

for the allocation and assignment under the 1934 Act of such frequencies. Such plan shall propose the immediate allocation and assignment of all such frequencies in accordance with section 309(j) of the 1934 Act (47 U.S.C. 309(j)).''.

TITLE IV—EDUCATION AND RELATED PROVISIONS

SEC. 4000. TABLE OF CONTENTS.

The table of contents for this title is as follows:

TITLE IV—EDUCATION AND RELATED PROVISIONS

Subtitle A—Higher Education

SEC. 4001. SHORT TITLE; REFERENCES; AND GENERAL EFFECTIVE DATE.

(a) SHORT TITLE.—This subtitle may be cited as the ''Student Loan Reform Act of 1995''.

(b) REFERENCES.—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 Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

(c) GENERAL EFFECTIVE DATE.—Unless otherwise specified in this subtitle, the amendments made by this subtitle shall take effect on January 1, 1996.

SEC. 4002. PARTICIPATION OF INSTITUTIONS AND ADMINISTRATION OF LOAN PROGRAMS.

(a) LIMITATION ON PROPORTION OF LOANS MADE UNDER THE DIRECT LOAN PROGRAM.—Section 453(a) (20 U.S.C. 1087c(a)) is amended—

(1) by amending paragraph (2) to read as follows:

''(2) DETERMINATION OF NUMBER OF AGREEMENTS.—Notwithstanding any other provision of law, the Secretary may enter into agreements under subsections (a) and (b) of section 454 with institutions for participation in the direct loan program under this part, subject to the following:

"(A) For academic year 1994–1995, loans made under this part shall represent not more than 5 percent of new student loan volume for such year.

"(B) For academic year 1995–1996, loans made under this part, including Federal Direct Consolidation Loans, shall represent not more than 30 percent of the new student loan volume for such year, except that the Secretary shall not enter into such an agreement with an eligible institution that has not applied and been accepted for participation in the direct loan program under this part on or before September 30, 1995.

"(C) For academic year 1996–1997 and for each succeeding academic year, loans made under this part, including Federal Direct Consolidation Loans, shall represent not more than 10 percent of the new student loan volume for such year, except that only the 102 eligible institutions that participated in the direct loan program under this part for academic year 1994–1995 shall be eligible to participate in such program for academic year 1996–1997 and for each succeeding academic year.";

(2) by striking paragraph (3);

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

(4) in the second sentence of paragraph (3) (as redesignated by paragraph (3)), by striking "on the most recent program data available" and inserting "on data from the academic year preceding the academic year for which the estimate is made".

(b) ELIMINATION OF CONSCRIPTION.—Section 453(b)(2) (20 U.S.C. 1087c(b)(2)) is amended—

(1) by striking subparagraph (B); and

(2) in subparagraph (A)—

(A) in clause (ii)—

(i) by striking "beginning"; and

(ii) by striking "clause (i); and" and inserting "subparagraph (A).";

(B) by redesignating clause (ii) (as amended by subparagraph (A)) as subparagraph (B); and

(C) by striking "(i) categorizing" and inserting "categorizing".

(c) CONTROL OF ADMINISTRATIVE EXPENSES.—Section 458 (20 U.S.C. 1087h) is amended—

(1) by amending subsection (a) to read as follows:

"(a) EXPENSES.—

"(1) IN GENERAL.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), each fiscal year there shall be available to the Secretary from funds not otherwise appropriated, funds to be obligated for subsidy costs under this part for the William D. Ford Federal Direct Loan Program. There shall also be available from funds not otherwise appropriated, funds to be obligated for indirect administrative expenses under this part and part B, not to exceed (from such funds not otherwise appropriated) $260,000,000 for fiscal year 1994, $345,000,000 for fiscal year 1995, $85,000,000 (and such sums as may be necessary for administrative cost allow-

ances for guaranty agencies for costs accrued prior to January 1, 1996) for fiscal year 1996, and $85,000,000 for each of the fiscal years 1997 through 2002.

"(B) REDUCTION.—The amount authorized to be made available for fiscal year 1997 under subparagraph (A) shall be reduced by the amount of any unobligated unexpended funds available to carry out this subsection for any fiscal year prior to fiscal year 1996.

"(2) DIRECT AND INDIRECT ADMINISTRATIVE EXPENSES.—

"(A) DIRECT ADMINISTRATIVE EXPENSES.—

"(i) IN GENERAL.—For purposes of this subsection the term 'direct administrative expenses' means the cost under the William D. Ford Federal Direct Loan Program of—

"(I) activities related to credit extension, loan origination, loan servicing, management of contractors, and payments to contractors, other government entities, and program participants, under this part;

"(II) collection of delinquent loans under this part; and

"(III) write-off and closeout of loans under this part.

"(ii) CLARIFICATION WITH RESPECT TO CERTAIN EXPENSES.—Such term does not include the costs to the Department of personnel, training, rent, printing, or other administrative costs, associated with the activities described in subclause (I), (II), or (III) of clause (i).

"(B) INDIRECT ADMINISTRATIVE EXPENSES.—For purposes of this subsection the term 'indirect administrative expenses' means the cost of—

"(i) personnel engaged in developing program regulations, policy and administrative guidance;

"(ii) audits of institutions and contractors;

"(iii) program reviews; and

"(iv) other oversight of the program under this part or under part B.

"(3) SUBSIDY COST.—The term 'subsidy cost' means the estimated long-term cost to the Federal Government of direct administrative expenses calculated on a net present value basis."; and

(2) by striking subsection (d).

(d) DEFAULT RATE LIMITATIONS ON DIRECT LENDING.—

(1) INSTITUTIONAL ELIGIBILITY BASED ON DEFAULT RATES.—The first sentence of section 435(a)(2)(A) (20 U.S.C. 1085(a)(2)(A)) is amended by inserting "or part D" after "under this part".

(2) COHORT DEFAULT RATE.—Section 435(m)(1) (20 U.S.C. 1085(m)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking "428, 428A, or 428H" and inserting "428, 428A, 428H, or part D (other than Federal Direct PLUS Loans)"; and

(ii) by striking "428C" and inserting "428C or 455(g)";

(B) in subparagraph (B)—

(i) by striking "only"; and

(ii) by inserting "and loans made under part D determined by the Secretary to be in default," after "for insurance,"; and

(C) in subparagraph (C), by striking "428C" and inserting "428C or 455(g)".

(3) DEFAULT RATES AND INCOME CONTINGENT REPAYMENT.—Section 435(m) (20 U.S.C. 1085(m)) is amended by adding at the end the following new paragraph:

"(5) DEFAULT RATE AND INCOME CONTINGENT REPAYMENT.—The Secretary shall prescribe regulations for the calculation of default rates for loans that are repaid pursuant to income contingent repayment under this part, which regulations shall be comparable to regulations for the calculation of default rates for loans that are repaid pursuant to income contingent repayment under part D.".

(4) TERMINATION OF INSTITUTIONAL PARTICIPATION.—Section 455 (20 U.S.C. 1087e) is amended by adding at the end the following new subsection:

"(l) TERMINATION OF INSTITUTIONS FOR HIGH DEFAULT RATES.—

"(1) METHODOLOGY AND CRITERIA.—The Secretary shall develop—

"(A) a methodology for the calculation of institutional default rates under the loan programs operated pursuant to this part;

"(B) criteria for the initiation of termination proceedings on the basis of such default rates; and

"(C) procedures for the conduct of such termination proceedings.

"(2) COMPARABILITY TO PART B.—In developing the methodology, criteria, and procedures required by paragraph (1), the Secretary, to the maximum extent possible, shall establish standards for the termination of institutions from participation in loan programs under this part that are comparable to the standards established for the termination of institutions from participation in the loan programs under part B. Such procedures shall include provisions for the appeal of default rate calculations based on deficiencies in the servicing of loans under this part that are comparable to the provisions for such appeals based on deficiencies in the servicing of loans under part B.

"(3) PROMULGATION.—The methodology, criteria, procedures and standards required by paragraphs (1) and (2) shall be promulgated in final form not later than 120 days after the date of enactment of this paragraph.".

(e) ELIMINATION OF TRANSITION TO DIRECT LOANS.—The Act (20 U.S.C. 1001 et seq.) is further amended—

(1) in section 422(c)(7) (20 U.S.C. 1072(c)(7))—

(A) in subparagraph (A), by striking "during the transition" and all that follows through "part D of this title"; and

(B) in subparagraph (B), by striking "section 428(c)(10)(F)(v)" and inserting "section 428(c)(9)(F)(v)";

(2) in section 422(g)(1) (20 U.S.C. 1072(g)(1))—

(A) in the first sentence, by striking "or the program authorized by part D of this title"; and

(B) in the second sentence, by striking "or the program authorized by part D of this title";

(3) in section 428(c)(8) (20 U.S.C. 1078(c)(8))—

(A) by striking subparagraph (B); and

(B) by striking "(A) If" and inserting "If";

(4) in section 428(c)(9)(F)(vii) (20 U.S.C. 1078(c)(9)(F)(vii))—

(A) by inserting "and" before "to avoid disruption"; and

(B) by striking ", and to ensure an orderly transition" and all that follows through the end of such clause and inserting a period;

(5) in section 428(c)(9)(K) (20 U.S.C. 1078(c)(9)(K)), by striking "the progress of the transition from the loan programs under this part to" and inserting "the integrity and administration of";

(6) in section 428(e)(1)(B)(ii) (20 U.S.C. 1078(e)(1)(B)(ii)), by striking "during the transition" and all that follows through "under part D of this title";

(7) in section 428(e)(3) (20 U.S.C. 1078(e)(3)), by striking "costs of transition" and inserting "indirect administrative expenses";

(8) in section 428(j)(3) (20 U.S.C. 1078(j)(3))—

(A) in the heading for paragraph (3), by striking "DURING TRANSITION TO DIRECT LENDING"; and

(B) in subparagraph (A), by striking "during the transition" and all that follows through "part D of this title";

(9) in the heading for paragraph (2) of section 453(c) (20 U.S.C. 1087c(c)), by striking "TRANSITION" and inserting "INSTITUTIONAL";

(10) in the heading for paragraph (3) of section 453(c) (20 U.S.C. 1087c(c)), by striking "AFTER TRANSITION"; and

(11) in section 456(b) (20 U.S.C. 1087f(b))—

(A) in paragraph (3), by inserting "and" after the semicolon;

(B) by striking paragraph (4);

(C) by redesignating paragraph (5) as paragraph (4); and

(D) in paragraph (4) (as redesignated by subparagraph (C)), by striking "successful operation" and inserting "integrity and efficiency".

(f) FEES FOR ORIGINATION SERVICES.—Section 452 (20 U.S.C. 1087b) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(g) RISK SHARING.—Section 428(n) (20 U.S.C. 1078(n)) is amended by adding at the end the following new paragraph:

"(5) APPLICABILITY TO PART D LOANS.—The provisions of this subsection shall apply to institutions of higher education

participating in direct lending under part D with respect to loans made under such part, and for the purposes of this paragraph, paragraph (4) shall be applied by inserting 'or part D' after 'this part'.".

(h) TECHNICAL AMENDMENT.—Section 428(b)(1)(X) (20 U.S.C. 1078(b)(1)(X)) is amended by striking "section 428(c)(10)" and inserting "section 428(c)(9)".

SEC. 4003. LOAN TERMS AND CONDITIONS.

(a) COMPARABILITY PROVISIONS.—

(1) IN GENERAL.—Paragraph (1) of section 455(a) (20 U.S.C. 1087e(a)) is amended to read as follows:

"(1) PARALLEL TERMS, CONDITIONS, ELIGIBILITY REQUIREMENTS, BENEFITS AND AMOUNTS.—Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, deferments, forbearances, eligibility requirements, and benefits, be subject to the same administrative requirements for origination, payment and processing of applications, be available in the same amounts, be subject to the same interest rates and same amount of fees, and have the same repayment plans, as the corresponding types of loans made to borrowers under sections 428, 428B, and 428H. The Secretary shall promulgate regulations implementing this paragraph not later than 120 days after the date of enactment of the Student Loan Reform Act of 1995.".

(2) CONFORMING AMENDMENTS.—Section 428(b)(1) (20 U.S.C. 1078(b)(1)) is amended—

(A) in subparagraph (D)(ii), by inserting "(except pursuant to a graduated, income-sensitive, or income contingent repayment schedule)" after "10 years"; and

(B) in subparagraph (E)(ii), by inserting "(except pursuant to a graduated, income-sensitive, or income contingent repayment schedule)" after "10 years".

(b) ABILITY OF PART D BORROWERS TO OBTAIN FEDERAL STAFFORD CONSOLIDATION LOANS.—Section 428C(a)(4) (20 U.S.C. 1078–3(a)(4)) is amended—

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

(2) by inserting after subparagraph (A) the following new subparagraph:

"(B) made under part D of this title;".

(c) ABILITY OF PART B BORROWERS TO OBTAIN FEDERAL DIRECT CONSOLIDATION LOANS.—Paragraph (5) of section 428C(b) (20 U.S.C. 1078–3(b)) is amended to read as follows:

"(5) DIRECT CONSOLIDATION LOANS FOR BORROWERS IN SPECIFIED CIRCUMSTANCES.—

"(A) Subject to subparagraphs (B) and (C) of section 453(a)(2), the Secretary may offer a borrower a Federal Direct Consolidation loan if such borrower is otherwise eligible for a consolidation loan pursuant to this section and such borrower is—

"(i) unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1) that holds one of such borrower's loans under this part; or

"(ii) unable to obtain a consolidation loan with income contingent repayment terms from a lender with an agreement under subsection (a)(1).

"(B) The Secretary shall establish appropriate certification procedures to verify the eligibility of borrowers for consolidation loans under this paragraph.

"(C) The Secretary shall not offer consolidation loans under this paragraph if, in the Secretary's judgment, the Department does not have the necessary origination and servicing arrangements in place for such loans, or the projected volume in such loans will be destabilizing to the availability of loans otherwise available under this part.".

(d) INCOME CONTINGENT REPAYMENT IN THE FEDERAL FAMILY EDUCATION LOAN PROGRAM.—

(1) INSURANCE PROGRAM AGREEMENTS.—Section 428(b)(1)(E)(i) (20 U.S.C. 1078(b)(1)(E)(i)) is amended by striking "or income-sensitive repayment schedule" and inserting "repayment schedule or an income-sensitive repayment schedule, and may, at the discretion of the lender, offer the borrower the option of repaying the loan in accordance with an income contingent repayment schedule,".

(2) REPAYMENT SCHEDULES.—The matter preceding clause (i) of section 428C(c)(2)(A) (20 U.S.C. 1078–3(c)(2)(A)) is amended—

(A) in the first sentence, by striking "or income-sensitive repayment schedules" and inserting "repayment schedules or income-sensitive repayment schedules, and may include, at the discretion of the lender, the establishment of income contingent repayment schedules"; and

(B) in the second sentence, by striking "income-sensitive" and inserting "graduated, income-sensitive, or income contingent".

(3) COMPARABLE TERMS AND CONDITIONS.—Section 428(m) (20 U.S.C. 1078(m)) is amended by adding at the end the following new paragraph:

"(3) INCOME CONTINGENT REPAYMENT SCHEDULES.—For the purpose of this part, income contingent repayment schedules established pursuant to subsection (b)(1)(E)(i) and section 428C(c)(2)(A) shall have terms and conditions comparable to the terms and conditions established by the Secretary pursuant to section 455(e)(4). The Secretary shall discharge or cancel the indebtedness of borrowers that repay pursuant to income contingent repayment under this part to the same extent, and under the same circumstances, as the Secretary discharges or cancels the indebtedness of borrowers that repay pursuant to income contingent repayment under part D.".

(e) PLUS PROGRAM REDUCTIONS.—Section 428B(b) (20 U.S.C. 1078–2(b)) is amended—

(1) by striking "(b) LIMITATION BASED ON NEED.—" and inserting the following:

"(b) ANNUAL LIMITS.—

"(1) LIMITATION BASED ON NEED.—";

(2) by inserting before the last sentence thereof the following:

"(3) LIMITATION COMPUTED ON BASIS OF ACTUAL PAYMENTS.—"; and

(3) by inserting before paragraph (3) (as designated by the amendment made by paragraph (2) of this section) the following new paragraph:

"(2) DOLLAR LIMITATION.—Subject to paragraph (1), the maximum amount parents may borrow for one student in any academic year or its equivalent (as defined by regulations of the Secretary) is $15,000.".

SEC. 4004. AMENDMENTS AFFECTING GUARANTY AGENCIES.

(a) USE OF RESERVE FUNDS TO PURCHASE DEFAULTED LOANS.—Section 422 (20 U.S.C. 1072) is amended by adding at the end the following new subsection:

"(h) USE OF RESERVE FUNDS TO PURCHASE DEFAULTED LOANS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a guaranty agency shall use not less than 50 percent of such agency's reserve funds to purchase and hold defaulted loans that are guaranteed by such agency and for which a claim for insurance is filed with such agency by an eligible lender. The amount of such purchases shall be considered as reserve funds under this section and used in the calculation of the minimum reserve level under section 428(c)(9).

"(2) SPECIAL RULE.—A guaranty agency shall not be required to use its reserve funds to purchase and hold defaulted loans in accordance with paragraph (1) to the extent that—

"(A) the dollar volume of insurance claims filed with such agency does not amount to 50 percent of such agency's available reserve funds;

"(B) such use is prohibited by State law; or

"(C) such use will compromise the ability of the guaranty agency to pay program expenses.".

(b) EXTENSION OF PERIOD A GUARANTY AGENCY MUST HOLD A DEFAULTED LOAN.—

(1) EXEMPTION FOR EXTENDED HOLDING PERIOD.—The last sentence of section 428(c)(1)(A) (20 U.S.C. 1078(c)(1)(A)) is amended by striking "A guaranty agency" and inserting "Except as provided in section 428K, a guaranty agency".

(2) NEW EXTENDED HOLDING PERIOD PROGRAM.—

(A) AMENDMENT.—Part B of title IV (20 U.S.C. 1071 et seq.) is amended by inserting after section 428J the following new section:

"SEC. 428K. GUARANTOR PURCHASE OF CLAIMS WITH RESERVE FUNDS.

"(a) LOANS SUBJECT TO EXTENDED HOLDING PERIOD.—Except as provided in subsection (b), a guaranty agency shall file a claim for reimbursement with respect to losses (resulting from the default of a borrower) subject to reimbursement by the Secretary pursuant to section 428(c)(1) not less than 180 days nor more than 225 days after the guaranty agency discharges such agency's insurance obligation on a loan insured under this part. Such claim shall include losses on the unpaid principal and accrued interest of any such loan, including interest accrued from the date of such discharge to

the date such agency files the claim for reimbursement from the Secretary.

"(b) LOANS EXCLUDED FROM EXTENDED HOLDING.—A guaranty agency may file a claim with respect to losses subject to reimbursement by the Secretary pursuant to section 428(c)(1) prior to 180 days after the date the guaranty agency discharges such agency's insurance obligation on a loan insured under this part, if—

"(1) such agency used 50 percent or more of such agency's reserve funds to purchase or hold loans in accordance with section 422(h);

"(2) such claim is based on an inability to locate the borrower and the guaranty agency certifies to the Secretary that—

"(A) diligent attempts were made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with section 428(c)(2)(G); and

"(B) such skip-tracing attempts to locate the borrower were unsuccessful; or

"(3) the guaranty agency determines that the borrower is unlikely to possess the financial resources to begin repaying the loan prior to 180 days after default by the borrower.

"(c) GUARANTY AGENCY EFFORTS DURING EXTENDED HOLDING PERIOD.—A guaranty agency shall attempt to bring a loan described in subsection (a) into repayment status during the period prior to 225 days after the date the guaranty agency discharges its insurance obligation on such loan, so that no claim for reimbursement by the Secretary is necessary. Upon securing payments satisfactory to the guaranty agency during such period, such agency shall, if practicable, sell such loan to an eligible lender. Such loan shall not be sold to an eligible lender that the guaranty agency determines has substantially failed to exercise the due diligence required of lenders under this part.

"(d) REGULATION PROHIBITED.—The Secretary shall not promulgate regulations regarding the collection activity of a guaranty agency with respect to a loan described in subsection (a) for which reinsurance has not been paid under section 428(c)(1).".

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply with respect to loans for which claims for insurance are filed by eligible lenders on or after January 1, 1996.

(c) ADMINISTRATIVE COST ALLOWANCE.—Section 428(f)(1) (20 U.S.C. 1078(f)(1)) is amended—

(1) in the matter preceding clause (i) of subparagraph (A), by striking "For a fiscal year prior to fiscal year 1994, the" and inserting "The"; and

(2) by amending subparagraph (B) to read as follows:

"(B)(i) The total amount of payments for any fiscal year prior to fiscal year 1994 made under this paragraph shall be equal to 1 percent of the total principal amount of the loans upon which insurance was issued under this part during such fiscal year by such guaranty agency.

"(ii) For the period beginning January 1, 1996 and ending September 30, 1996, and for each fiscal year thereafter, each guaranty agency shall receive an administrative cost allowance, payable quarterly, for such fiscal year calculated on the basis

of 0.85 percent of the total principal amount of the loans upon which insurance was issued under this part during such fiscal year by such guaranty agency.

"(iii) The guaranty agency shall be deemed to have a contractual right against the United States to receive payments according to the provisions of this subparagraph. Payments shall be made promptly and without administrative delay to any guaranty agency submitting an accurate and complete application therefor under this subparagraph.

"(iv) Notwithstanding clauses (ii) and (iii)—

"(I) for each of the fiscal years 1996 through 1998, the Secretary shall pay an aggregate amount for such year of not more than $220,000,000 to all guaranty agencies receiving administrative cost allowances under this subparagraph; and

"(II) for each of the fiscal years 1999 through 2002, the Secretary shall pay an aggregate amount for such year of not more than $180,000,000 to all guaranty agencies receiving administrative cost allowances under this subparagraph.".

(d) SECRETARY'S EQUITABLE SHARE OF COLLECTIONS ON CONSOLIDATED DEFAULTED LOANS.—Section 428(c)(6)(A) (20 U.S.C. 1078(c)(6)(A)) is amended—

(1) in the matter preceding clause (i)—

(A) by inserting "or on behalf of" after "made by"; and

(B) by inserting ", including payments made to discharge loans made under this title to obtain a consolidation loan pursuant to this part or part D," after "borrower"; and

(2) in clause (ii), by inserting after "an amount equal to" the following: "—

"(I) for defaulted loans consolidated pursuant to this part or part D on or after January 1, 1996, 18.5 percent of the balance of the principal, accrued interest, and collection costs, outstanding at the time of such consolidation; or

"(II) for all other loans,".

(e) RESERVE FUND REFORMS.—

(1) STRENGTHENING AND STABILIZING GUARANTY AGENCIES.—Section 428(c) (20 U.S.C. 1078(c)) is amended—

(A) in paragraph (9)(C)(ii), by striking "80 percent" and inserting "76 percent"; and

(B) in paragraph (9)(E)—

(i) in the matter preceding clause (i), by striking "The Secretary may terminate a" and inserting "After providing a guaranty agency notice and opportunity for a hearing on the record, the Secretary may terminate such";

(ii) in clause (iv), by inserting "or" after the semicolon;

(iii) by striking clause (vi); and

(iv) in clause (v), by striking "; or" and inserting a period.

(2) ADDITIONAL AMENDMENTS.—Section 422 (20 U.S.C. 1072) is further amended—

(A) in the last sentence of subsection (a)(2), by striking "Except as provided in section 428(c)(10)(E) or (F), such" and inserting "Except as provided in subparagraph (E) or (F) of section 428(c)(9), such"; and

(B) in subsection (g), by amending paragraph (4) to read as follows:

"(4) DISPOSITION OF FUNDS RETURNED TO OR RECOVERED BY THE SECRETARY.—Any funds that are returned to or otherwise recovered by the Secretary pursuant to this subsection shall be returned to the Treasury of the United States for purposes of reducing the Federal debt and shall be deposited into the special account under section 3113(d) of title 31, United States Code.".

(f) ELIMINATION OF SUPPLEMENTAL PRECLAIMS ASSISTANCE.—

(1) AMENDMENT.—Section 428(l) (20 U.S.C. 1078(l)) is amended—

(A) by striking paragraph (2); and

(B) by striking "(l) PRECLAIMS" and all that follows through "Upon receipt" and inserting the following:

"(l) PRECLAIMS ASSISTANCE AND SUPPLEMENTAL PRECLAIMS ASSISTANCE.—Upon receipt".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to loans for which the first delinquency occurs on or after January 1, 1996.

(g) RESERVE RATIOS.—Section 428(c)(9)(A) (20 U.S.C. 1078(c)(9)(A)) is amended—

(1) in clause (i), by inserting "and" after the semicolon;

(2) in clause (ii), by striking "; and" and inserting a period; and

(3) by striking clause (iii).

(h) GUARANTY AGENCY REIMBURSEMENT.—

(1) IN GENERAL.—Section 428(c)(1) (20 U.S.C. 1078(c)(1)) is amended—

(A) in subparagraph (A), by striking "98 percent" and inserting "96 percent"; and

(B) in subparagraph (B)—

(i) in clause (i), by striking "88 percent" and inserting "86 percent"; and

(ii) in clause (ii), by striking "78 percent" and inserting "76 percent".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to loans for which the first disbursement is made on or after January 1, 1996.

SEC. 4005. AMENDMENTS AFFECTING FFELP LENDERS AND LOAN HOLDERS.

(a) RISK SHARING BY THE LOAN HOLDERS.—

(1) AMENDMENT.—Section 428(b)(1)(G) (20 U.S.C. 1078(b)(1)(G)) is amended by striking "not less than 98 percent" and inserting "95 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to loans for which the first disbursement is made on or after January 1, 1996.

(b) LENDERS-OF-LAST-RESORT.—Section 428(j)(2) (20 U.S.C. 1078(j)(2)) is amended—

(1) in subparagraph (A), by striking "60 days" and inserting "15 days"; and

(2) in subparagraph (B), by striking "two rejections from eligible lenders" and inserting "one rejection from an eligible lender".

(c) EXCEPTIONAL PERFORMANCE INSURANCE REDUCTION.—Section 428I(b)(1) (20 U.S.C. 1078–9(b)(1)) is amended—

(1) in the paragraph heading, by striking "100 PERCENT"; and

(2) by striking "100 percent" and inserting "95 percent (or 100 percent in the case of a lender-of-last-resort)".

(d) LOAN FEES FROM LENDERS.—

(1) AMENDMENT.—Section 438(d)(2) (20 U.S.C. 1087–1(d)(2)) is amended by striking "0.50 percent" and inserting "0.80 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to loans for which the first disbursement is made on or after January 1, 1996.

(e) LENDER AND HOLDER REBATE.—

(1) AMENDMENT.—Section 438 (20 U.S.C. 1078) is amended by adding at the end the following new subsection:

"(g) SUBSIDY REBATE ON STAFFORD AND PLUS LOANS.—

"(1) REBATE.—Each holder of a subsidized or unsubsidized Federal Stafford Loan under this part, or a Federal PLUS loan under section 428B, shall pay to the Secretary, on June 30 and December 31 of each year, a subsidy rebate in an amount equal to 0.035 percent of the unpaid principal amount of each such loan that such holder holds during the repayment period described in section 428(b)(7), except that, notwithstanding subparagraphs (A), (B), and (C) of section 428(b)(7), such holder shall pay a subsidy rebate under this paragraph with respect to such loan during any period of authorized forbearance.

"(2) PAYMENT OF REBATE.—The subsidy rebate shall be paid, to the extent possible, by subtracting from amounts owed such holder under section 438(b) (after deducting from such amounts any amount owed by such holder under section 438(d) for the quarters ending June 30 and December 31, as appropriate) the amount of subsidy rebates owed by such holder. To the extent the amounts owed such holder under section 438(b) (after making the deduction described in the preceding sentence) are insufficient to pay in full the subsidy rebates due from such holder, such holder shall pay the insufficiency by check or wire transfer of funds, in a manner determined by the Secretary.

"(3) DEPOSIT.—The Secretary shall deposit all subsidy rebates collected under the second sentence of paragraph (2) into the insurance fund established in section 431.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to loans for which the first disbursement is made on or after January 1, 1996.

(f) SMALL LENDER AUDIT EXEMPTION.—Section 428(b)(1)(U)(iii) (20 U.S.C. 1078(b)(1)(U)(iii)) is amended—

(1) by inserting "in the case of any lender that originates or holds more than $5,000,000 in principal on loans made under this title in any fiscal year" before "for (I)";

(2) in subclause (I), by inserting "such" before "lender at least once";

(3) in subclause (II), by inserting "such" before "a lender that is audited"; and

(4) by striking "if the lender" and inserting "if such lender".

SEC. 4006. CONNIE LEE PRIVATIZATION.

(a) STATUS OF THE CORPORATION AND CORPORATE POWERS; OBLIGATIONS NOT FEDERALLY GUARANTEED.—

(1) STATUS OF THE CORPORATION.—The Corporation shall not be an agency, instrumentality, or establishment of the United States Government, nor a Government corporation nor a Government controlled corporation as such terms are defined in section 103 of title 5, United States Code. No action under section 1491 of title 28, United States Code (commonly known as the Tucker Act) shall be allowable against the United States based on the actions of the Corporation.

(2) CORPORATE POWERS.—The Corporation shall be subject to the provisions of this section, and, to the extent not inconsistent with this section, to the District of Columbia Business Corporation Act (or the comparable law of another State, if applicable). The Corporation shall have the powers conferred upon a corporation by the District of Columbia Business Corporation Act (or such other applicable State law) as from time to time in effect in order to conduct its affairs as a private, for-profit corporation and to carry out its purposes and activities incidental thereto. The Corporation shall have the power to enter into contracts, to execute instruments, to incur liabilities, to provide products and services, and to do all things as are necessary or incidental to the proper management of its affairs and the efficient operation of a private, for-profit business.

(3) LIMITATION ON OWNERSHIP OF STOCK.—

(A) SECRETARY OF THE TREASURY.—The Secretary of the Treasury, in completing the sale of stock pursuant to subsection (c), may not sell or issue the stock held by the Secretary of Education to an agency, instrumentality, or establishment of the United States Government, or to a Government corporation or a Government controlled corporation as such terms are defined in section 103 of title 5, United States Code, or to a government-sponsored enterprise as such term is defined in section 622 of title 2, United States Code.

(B) STUDENT LOAN MARKETING ASSOCIATION.—The Student Loan Marketing Association shall not increase its share of the ownership of the Corporation in excess of 42 percent of the shares of stock of the Corporation outstanding on the date of enactment of this Act. The Student Loan Marketing Association shall not control the operation of the Corporation, except that the Student Loan Marketing Association may participate in the election of directors as a shareholder, and may continue to exercise its right to appoint directors under section 754 of the Higher Education Act of 1965 (20 U.S.C. 1132f–3) as long as that section is in effect.

(C) PROHIBITION.—Until such time as the Secretary of the Treasury sells the stock of the Corporation owned by the Secretary of Education pursuant to subsection (c), the Student Loan Marketing Association shall not provide financial support or guarantees to the Corporation.

(D) FINANCIAL SUPPORT OR GUARANTEES.—After the Secretary of the Treasury sells the stock of the Corporation owned by the Secretary of Education pursuant to subsection (c), the Student Loan Marketing Association may provide financial support or guarantees to the Corporation, if such support or guarantees are subject to terms and conditions that are no more advantageous to the Corporation than the terms and conditions the Student Loan Marketing Association provides to other entities, including, where applicable, other monoline financial guaranty corporations in which the Student Loan Marketing Association has no ownership interest.

(4) NO FEDERAL GUARANTEE.—

(A) OBLIGATIONS INSURED BY THE CORPORATION.—

(i) FULL FAITH AND CREDIT OF THE UNITED STATES.—No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is guaranteed by the full faith and credit of the United States.

(ii) STUDENT LOAN MARKETING ASSOCIATION.—No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is guaranteed by the Student Loan Marketing Association.

(iii) SPECIAL RULE.—This paragraph shall not affect the determination of whether such obligation is guaranteed for purposes of Federal income taxes.

(B) SECURITIES OFFERED BY THE CORPORATION.—No debt or equity securities of the Corporation shall be deemed to be guaranteed by the full faith and credit of the United States.

(5) DEFINITION.—The term "Corporation" as used in this section means the College Construction Loan Insurance Association as in existence on the day before the date of enactment of this Act, and to any successor corporation.

(b) RELATED PRIVATIZATION REQUIREMENTS.—

(1) NOTICE REQUIREMENTS.—

(A) IN GENERAL.—During the six-year period following the date of enactment of this Act, the Corporation shall include, in each of the Corporation's contracts for the insurance, guarantee, or reinsurance of obligations, and in each document offering debt or equity securities of the Corporation a prominent statement providing notice that—

(i) such obligations or such securities, as the case may be, are not obligations of the United States, nor are such obligations guaranteed in any way by the full faith and credit of the United States; and

(ii) the Corporation is not an instrumentality of the United States.

(B) Additional notice.—During the five-year period following the sale of stock pursuant to subsection (c)(1), in addition to the notice requirements in subparagraph (A), the Corporation shall include, in each of the contracts and documents referred to in such subparagraph, a prominent statement providing notice that the United States is not an investor in the Corporation.

(2) Corporate charter.—The Corporation's charter shall be amended as necessary and without delay to conform to the requirements of this section.

(3) Corporate name.—The name of the Corporation, or of any direct or indirect subsidiary thereof, may not contain the term "College Construction Loan Insurance Association", or any substantially similar variation thereof.

(4) Articles of incorporation.—The Corporation shall amend its articles of incorporation without delay to reflect that one of the purposes of the Corporation shall be to guarantee, insure, and reinsure bonds, leases, and other evidences of debt of educational institutions, including Historically Black Colleges and Universities and other academic institutions which are ranked in the lower investment grade category using a nationally recognized credit rating system.

(5) Requirements until stock sale.—Notwithstanding subsection (d), the requirements of sections 754 and 760 of the Higher Education Act of 1965 (20 U.S.C. 1132f–3 and 1132f–9), as such sections were in effect on the day before the date of enactment of this Act, shall continue to be effective until the day immediately following the date of closing of the purchase of the Secretary of Education's stock (or the date of closing of the final purchase, in the case of multiple transactions) pursuant to subsection (c)(1) of this Act.

(c) Sale of Federally Owned Stock.—

(1) Sale of stock required.—The Secretary of the Treasury shall sell, pursuant to section 324 of title 31, United States Code, the stock of the Corporation owned by the Secretary of Education as soon as possible after the date of enactment of this Act, but not later than six months after such date.

(2) Purchase by the corporation.—In the event that the Secretary of the Treasury is unable to sell the stock, or any portion thereof, at a price acceptable to the Secretary of Education and the Secretary of the Treasury, the Corporation shall purchase, within 6 months after the date of enactment of this Act, such stock at a price determined by the Secretary of the Treasury and acceptable to the Corporation based on the independent appraisal of one or more nationally recognized financial firms, except that such price shall not exceed the value of the Secretary of Education's stock as determined by the Congressional Budget Office in House Report 104–153, dated June 22, 1995.

(3) Reimbursement of costs of sale.—The Secretary of the Treasury shall be reimbursed from the proceeds of the sale of the stock under this subsection for all reasonable costs related to such sale, including all reasonable expenses relating to one or more independent appraisals under this subsection.

(4) ASSISTANCE BY THE CORPORATION.—The Corporation shall provide such assistance as the Secretary of the Treasury and the Secretary of Education may require to facilitate the sale of the stock under this subsection.

(d) REPEAL OF STATUTORY RESTRICTIONS AND RELATED PROVISIONS.—Part D of title VII of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is repealed.

SEC. 4007. EXTENSION OF PROGRAM DURATION.

Part B of title IV (20 U.S.C. 1071 et seq.) is amended—

(1) in section 424(a) (20 U.S.C. 1074(a)), by striking "1998" and inserting "2002";

(2) in section 428(a)(5) (20 U.S.C. 1078(a)(5))—

(A) by striking "1998" and inserting "2002"; and

(B) by striking "2002" and inserting "2006"; and

(3) in section 428C(e) (20 U.S.C. 1078–3(e)), by amending the first sentence to read as follows: "The authority to make loans under this section expires at the close of September 30, 2002.".

Subtitle B—Provisions Relating to the Employee Retirement Income Security Act of 1974

SEC. 4101. WAIVER OF MINIMUM PERIOD FOR JOINT AND SURVIVOR ANNUITY EXPLANATION BEFORE ANNUTIY STARTING DATE.

(a) GENERAL RULE.—For purposes of section 205(c)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(3)(A)), the minimum period prescribed by the Secretary of the Treasury between the date that the explanation referred to in such section is provided and the annuity starting date shall not apply if waived by the participant and, if applicable, the participant's spouse.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to plan years beginning after December 31, 1995.

TITLE V—ENERGY AND NATURAL RESOURCES PROVISIONS

Subtitle A—Nuclear Regulatory Commission Annual Charges

SEC. 5001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

Section 6101(a)(3) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(a)(3)) is amended by striking "September 30, 1998" and inserting "September 30, 2002".

Subtitle B—Department of Energy Assets

CHAPTER 1—UNITED STATES ENRICHMENT CORPORATION

SEC. 5201. SHORT TITLE.

This chapter may be cited as the "USEC Privatization Act".

SEC. 5202. DEFINITIONS.

For purposes of this chapter:

(1) The term "AVLIS" means atomic vapor laser isotope separation technology.

(2) The term "Corporation" means the United States Enrichment Corporation and, unless the context otherwise requires, includes the private corporation and any successor thereto following privatization.

(3) The term "gaseous diffusion plants" means the Paducah Gaseous Diffusion Plant at Paducah, Kentucky and the Portsmouth Gaseous Diffusion Plant at Piketon, Ohio.

(4) The term "highly enriched uranium" means uranium enriched to 20 percent or more of the uranium–235 isotope.

(5) The term "low-enriched uranium" means uranium enriched to less than 20 percent of the uranium–235 isotope, including that which is derived from highly enriched uranium.

(6) The term "low-level radioactive waste" has the meaning given such term in section 2(9) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b(9)).

(7) The term "private corporation" means the corporation established under section 5205.

(8) The term "privatization" means the transfer of ownership of the Corporation to private investors.

(9) The term "privatization date" means the date on which 100 percent of the ownership of the Corporation has been transferred to private investors.

(10) The term "public offering" means an underwritten offering to the public of the common stock of the private corporation pursuant to section 5204.

(11) The "Russian HEU Agreement" means the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993.

(12) The term "Secretary" means the Secretary of Energy.

(13) The "Suspension Agreement" means the Agreement to Suspend the Antidumping Investigation on Uranium from the Russian Federation, as amended.

(14) The term "uranium enrichment" means the separation of uranium of a given isotopic content into 2 components, 1 having a higher percentage of a fissile isotope and 1 having a lower percentage.

SEC. 5203. SALE OF THE CORPORATION.

(a) AUTHORIZATION.—The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer the interest of the United States in the United States Enrichment

Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of the operation of the Department of Energy's gaseous diffusion plants, provides for the protection of the public interest in maintaining a reliable and economical domestic source of uranium mining, enrichment and conversion services, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

(b) PROCEEDS.—Proceeds from the sale of the United States' interest in the Corporation shall be deposited in the general fund of the Treasury.

SEC. 5204. METHOD OF SALE.

(a) AUTHORIZATION.—The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer ownership of the assets and obligations of the Corporation to the private corporation established under section 5205 (which may be consummated through a merger or consolidation effected in accordance with, and having the effects provided under, the law of the state of incorporation of the private corporation, as if the Corporation were incorporated thereunder).

(b) BOARD DETERMINATION.—The Board, with the approval of the Secretary of the Treasury, shall select the method of transfer and establish terms and conditions for the transfer that will provide the maximum proceeds to the Treasury of the United States and will provide for the long-term viability of the private corporation, the continued operation of the gaseous diffusion plants, and the public interest in maintaining reliable and economical domestic uranium mining and enrichment industries.

(c) ADEQUATE PROCEEDS.—The Secretary of the Treasury shall not allow the privatization of the Corporation unless before the sale date the Secretary of Treasury determines that the method of transfer will provide the maximum proceeds to the Treasury consistent with the principles set forth in section 5203(a).

(d) APPLICATION OF SECURITIES LAWS.—Any offering or sale of securities by the private corporation shall be subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), and the provisions of the Constitution and laws of any State, territory, or possession of the United States relating to transactions in securities.

SEC. 5205. ESTABLISHMENT OF PRIVATE CORPORATION.

(a) INCORPORATION.—(1) The directors of the Corporation shall establish a private for-profit corporation under the laws of a State for the purpose of receiving the assets and obligations of the Corporation at privatization and continuing the business operations of the Corporation following privatization.

(2) The directors of the Corporation may serve as incorporators of the private corporation and shall take all steps necessary to establish the private corporation, including the filing of articles of incorporation consistent with the provisions of this chapter.

(3) Employees and officers of the Corporation (including members of the Board of Directors) acting in accordance with this section on behalf of the private corporation shall be deemed to be acting in

their official capacities as employees or officers of the Corporation for purposes of section 205 of title 18, United States Code.

(b) STATUS OF THE PRIVATE CORPORATION.—(1) The private corporation shall not be an agency, instrumentality, or establishment of the United States, a Government corporation, or a Government-controlled corporation.

(2) Except as otherwise provided by this chapter, financial obligations of the private corporation shall not be obligations of, or guaranteed as to principal or interest by, the Corporation or the United States, and the obligations shall so plainly state.

(3) No action under section 1491 of title 28, United States Code, shall be allowable against the United States based on actions of the private corporation.

(c) APPLICATION OF POST-GOVERNMENT EMPLOYMENT RESTRICTIONS.—Beginning on the privatization date, the restrictions stated in section 207 (a), (b), (c), and (d) of title 18, United States Code, shall not apply to the acts of an individual done in carrying out official duties as a director, officer, or employee of the private corporation, if the individual was an officer or employee of the Corporation (including a director) continuously during the 45 days prior to the privatization date.

(d) DISSOLUTION.—In the event that the privatization does not occur, the Corporation will provide for the dissolution of the private corporation within 1 year of the private corporation's incorporation unless the Secretary of the Treasury or his delegate, upon the Corporation's request, agrees to delay any such dissolution for an additional year.

SEC. 5206. TRANSFERS TO THE PRIVATE CORPORATION.

Concurrent with privatization, the Corporation shall transfer to the private corporation—

(1) the lease of the gaseous diffusion plants in accordance with section 5207,

(2) all personal property and inventories of the Corporation,

(3) all contracts, agreements, and leases under section 5208(a),

(4) the Corporation's right to purchase power from the Secretary under section 5208(b),

(5) such funds in accounts of the Corporation held by the Treasury or on deposit with any bank or other financial institution as approved by the Secretary of the Treasury, and

(6) all of the Corporation's records, including all of the papers and other documentary materials, regardless of physical form or characteristics, made or received by the Corporation.

SEC. 5207. LEASING OF GASEOUS DIFFUSION FACILITIES.

(a) TRANSFER OF LEASE.—Concurrent with privatization, the Corporation shall transfer to the private corporation the lease of the gaseous diffusion plants and related property for the remainder of the term of such lease in accordance with the terms of such lease.

(b) RENEWAL.—The private corporation shall have the exclusive option to lease the gaseous diffusion plants and related property for additional periods following the expiration of the initial term of the lease.

(c) EXCLUSION OF FACILITIES FOR PRODUCTION OF HIGHLY ENRICHED URANIUM.—The Secretary shall not lease to the private corporation any facilities necessary for the production of highly enriched uranium but may, subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), grant the Corporation access to such facilities for purposes other than the production of highly enriched uranium.

(d) DOE RESPONSIBILITY FOR PREEXISTING CONDITIONS.—The payment of any costs of decontamination and decommissioning, response actions, or corrective actions with respect to conditions existing before July 1, 1993 at the gaseous diffusion plants shall remain the sole responsibility of the Secretary.

(e) ENVIRONMENTAL AUDIT.—For purposes of subsection (d), the conditions existing before July 1, 1993, at the gaseous diffusion plants shall be determined from the environmental audit conducted pursuant to section 1403(e) of the Atomic Energy Act of 1954 (42 U.S.C. 2297c–2(e)).

(f) TREATMENT UNDER PRICE-ANDERSON PROVISIONS.—Any lease executed between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, under this section shall be deemed to be a contract for purposes of section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)).

(g) WAIVER OF EIS REQUIREMENT.—The execution or transfer of the lease between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, shall not be considered a major Federal action significantly affecting the quality of the human environment for purposes of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

SEC. 5208. TRANSFER OF CONTRACTS.

(a) TRANSFER OF CONTRACTS.—Concurrent with privatization, the Corporation shall transfer to the private corporation all contracts, agreements, and leases, including all uranium enrichment contracts, that were—

(1) transferred by the Secretary to the Corporation pursuant to section 1401(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2297c(b)), or

(2) entered into by the Corporation before the privatization date.

(b) NONTRANSFERABLE POWER CONTRACTS.—The Corporation shall transfer to the private corporation the right to purchase power from the Secretary under the power purchase contracts for the gaseous diffusion plants executed by the Secretary before July 1, 1993. The Secretary shall continue to receive power for the gaseous diffusion plants under such contracts and shall continue to resell such power to the private corporation at cost during the term of such contracts.

(c) EFFECT OF TRANSFER.—(1) Notwithstanding subsection (a), the United States shall remain obligated to the parties to the contracts, agreements, and leases transferred under subsection (a) for the performance of its obligations under such contracts, agreements, or leases during their terms. Performance of such obligations by the private corporation shall be considered performance by the United States.

(2) If a contract, agreement, or lease transferred under subsection (a) is terminated, extended, or materially amended after the privatization date—

(A) the private corporation shall be responsible for any obligation arising under such contract, agreement, or lease after any extension or material amendment, and

(B) the United States shall be responsible for any obligation arising under the contract, agreement, or lease before the termination, extension, or material amendment.

(3) The private corporation shall reimburse the United States for any amount paid by the United States under a settlement agreement entered into with the consent of the private corporation or under a judgment, if the settlement or judgment—

(A) arises out of an obligation under a contract, agreement, or lease transferred under subsection (a), and

(B) arises out of actions of the private corporation between the privatization date and the date of a termination, extension, or material amendment of such contract, agreement, or lease.

(d) PRICING.—The Corporation may establish prices for its products, materials, and services provided to customers on a basis that will allow it to attain the normal business objectives of a profit making corporation.

SEC. 5209. LIABILITIES.

(a) LIABILITY OF THE UNITED STATES.—(1) Except as otherwise provided in this chapter, all liabilities arising out of the operation of the uranium enrichment enterprise before July 1, 1993, shall remain the direct liabilities of the Secretary.

(2) Except as provided in subsection (a)(3) or otherwise provided in a memorandum of agreement entered into by the Corporation and the Office of Management and Budget prior to the privatization date, all liabilities arising out of the operation of the Corporation between July 1, 1993, and the privatization date shall remain the direct liabilities of the United States.

(3) All liabilities arising out of the disposal of depleted uranium generated by the Corporation between July 1, 1993, and the privatization date shall become the direct liabilities of the Secretary.

(4) Any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising from any action taken by any agent or officer of the United States in connection with the privatization of the Corporation is hereby withdrawn.

(5) To the extent that any claim against the United States under this section is of the type otherwise required by Federal statute or regulation to be presented to a Federal agency or official for adjudication or review, such claim shall be presented to the Department of Energy in accordance with procedures to be established by the Secretary. Nothing in this paragraph shall be construed to impose on the Department of Energy liability to pay any claim presented pursuant to this paragraph.

(6) The Attorney General shall represent the United States in any action seeking to impose liability under this subsection.

(b) LIABILITY OF THE CORPORATION.—Notwithstanding any provision of any agreement to which the Corporation is a party, the

Corporation shall not be considered in breach, default, or violation of any agreement because of the transfer of such agreement to the private corporation under section 5208 or any other action the Corporation is required to take under this chapter.

(c) LIABILITY OF THE PRIVATE CORPORATION.—Except as provided in this chapter, the private corporation shall be liable for any liabilities arising out of its operations after the privatization date.

(d) LIABILITY OF OFFICERS AND DIRECTORS.—(1) No officer, director, employee, or agent of the Corporation shall be liable in any civil proceeding to any party in connection with any action taken in connection with the privatization if, with respect to the subject matter of the action, suit, or proceeding, such person was acting within the scope of his employment.

(2) This subsection shall not apply to claims arising under the Securities Act of 1933 (15 U.S.C. 77a. et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a. et seq.), or under the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities.

SEC. 5210. EMPLOYEE PROTECTIONS.

(a) CONTRACTOR EMPLOYEES.—(1) Privatization shall not diminish the accrued, vested pension benefits of employees of the Corporation's operating contractor at the two gaseous diffusion plants.

(2) In the event that the private corporation terminates or changes the contractor at either or both of the gaseous diffusion plants, the plan sponsor or other appropriate fiduciary of the pension plan covering employees of the prior operating contractor shall arrange for the transfer of all plan assets and liabilities relating to accrued pension benefits of such plan's participants and beneficiaries from such plant to a pension plan sponsored by the new contractor or the private corporation or a joint-labor management plan, as the case may be.

(3) In addition to any obligations arising under the National Labor Relations Act (29 U.S.C. 151 et seq.), any employer (including the private corporation if it operates a gaseous diffusion plant without a contractor or any contractor of the private corporation) at a gaseous diffusion plant shall—

(A) abide by the terms of any unexpired collective bargaining agreement covering employees in bargaining units at the plant and in effect on the privatization date until the stated expiration or termination date of the agreement; or

(B) in the event a collective bargaining agreement is not in effect upon the privatization date, have the same bargaining obligations under section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) as it had immediately before the privatization date.

(4) If the private corporation replaces its operating contractor at a gaseous diffusion plant, the new employer (including the new contractor or the private corporation if it operates a gaseous diffusion plant without a contractor) shall—

(A) offer employment to non-management employees of the predecessor contractor to the extent that their jobs still exist or they are qualified for new jobs, and

(B) abide by the terms of the predecessor contractor's collective bargaining agreement until the agreement expires or a new agreement is signed.

(5) In the event of a plant closing or mass layoff (as such terms are defined in section 2101(a)(2) and (3) of title 29, United States Code) at either of the gaseous diffusion plants, the Secretary of Energy shall treat any adversely affected employee of an operating contractor at either plant who was an employee at such plant on July 1, 1993, as a Department of Energy employee for purposes of sections 3161 and 3162 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h–7274i).

(6)(A) The Secretary and the private corporation shall cause the post-retirement health benefits plan provider (or its successor) to continue to provide benefits for eligible persons, as described under subparagraph (B), employed by an operating contractor at either of the gaseous diffusion plants in an economically efficient manner and at substantially the same level of coverage as eligible retirees are entitled to receive on the privatization date.

(B) Persons eligible for coverage under subparagraph (A) shall be limited to:

(i) persons who retired from active employment at one of the gaseous diffusion plants on or before the privatization date as vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant; and

(ii) persons who are employed by the Corporation's operating contractor on or before the privatization date and are vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant.

(C) The Secretary shall fund the entire cost of post-retirement health benefits for persons who retired from employment with an operating contractor prior to July 1, 1993.

(D) The Secretary and the Corporation shall fund the cost of post-retirement health benefits for persons who retire from employment with an operating contractor on or after July 1, 1993, in proportion to the retired person's years and months of service at a gaseous diffusion plant under their respective management.

(7)(A) Any suit under this subsection alleging a violation of an agreement between an employer and a labor organization shall be brought in accordance with section 301 of the Labor Management Relations Act (29 U.S.C. 185).

(B) Any charge under this subsection alleging an unfair labor practice violative of section 8 of the National Labor Relations Act (29 U.S.C. 158) shall be pursued in accordance with section 10 of the National Labor Relations Act (29 U.S.C. 160).

(C) Any suit alleging a violation of any provision of this subsection, to the extent it does not allege a violation of the National Labor Relations Act, may be brought in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy or the citizenship of the parties.

(b) FORMER FEDERAL EMPLOYEES.—(1)(A) An employee of the Corporation that was subject to either the Civil Service Retirement System (referred to in this section as "CSRS") or the Federal Employees' Retirement System (referred to in this section as "FERS") on the day immediately preceding the privatization date shall elect—

(i) to retain the employee's coverage under either CSRS or FERS, as applicable, in lieu of coverage by the Corporation's retirement system, or

(ii) to receive a deferred annuity or lump-sum benefit payable to a terminated employee under CSRS or FERS, as applicable.

(B) An employee that makes an election under subparagraph (A)(ii) shall have the option to transfer the balance in the employee's Thrift Savings Plan account to a defined contribution plan under the Corporation's retirement system, consistent with applicable law and the terms of the Corporation's defined contribution plan.

(2) The Corporation shall pay to the Civil Service Retirement and Disability Fund—

(A) such employee deductions and agency contributions as are required by sections 8334, 8422, and 8423 of title 5, United States Code, for those employees who elect to retain their coverage under either CSRS or FERS pursuant to paragraph (1);

(B) such additional agency contributions as are determined necessary by the Office of Personnel Management to pay, in combination with the sums under subparagraph (A), the "normal cost" (determined using dynamic assumptions) of retirement benefits for those employees who elect to retain their coverage under CSRS pursuant to paragraph (1), with the concept of "normal cost" being used consistent with generally accepted actuarial standards and principles; and

(C) such additional amounts, not to exceed two percent of the amounts under subparagraphs (A) and (B), as are determined necessary by the Office of Personnel Management to pay the cost of administering retirement benefits for employees who retire from the Corporation after the privatization date under either CSRS or FERS, for their survivors, and for survivors of employees of the Corporation who die after the privatization date (which amounts shall be available to the Office of Personnel Management as provided in section 8348(a)(1)(B) of title 5, United States Code).

(3) The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by section 8432 of title 5, United States Code, for those employees who elect to retain their coverage under FERS pursuant to paragraph (1).

(4) Any employee of the Corporation who was subject to the Federal Employee Health Benefits Program (referred to in this section as "FEHBP") on the day immediately preceding the privatization date and who elects to retain coverage under either CSRS or FERS pursuant to paragraph (1) shall have the option to receive health benefits from a health benefit plan established by the Corporation or to continue without interruption coverage under the FEHBP, in lieu of coverage by the Corporation's health benefit system.

(5) The Corporation shall pay to the Employees Health Benefits Fund—

(A) such employee deductions and agency contributions as are required by section 8906(a)–(f) of title 5, United States Code, for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4); and

(B) such amounts as are determined necessary by the Office of Personnel Management under paragraph (6) to reimburse the Office of Personnel Management for contributions under section 8906(g)(1) of title 5, United States Code, for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4).

(6) The amounts required under paragraph (5)(B) shall pay the Government contributions for retired employees who retire from the Corporation after the privatization date under either CSRS or FERS, for survivors of such retired employees, and for survivors of employees of the Corporation who die after the privatization date, with said amounts prorated to reflect only that portion of the total service of such employees and retired persons that was performed for the Corporation after the privatization date.

SEC. 5211. OWNERSHIP LIMITATIONS.

(a) SECURITIES LIMITATIONS.—No director, officer, or employee of the Corporation may acquire any securities, or any rights to acquire any securities of the private corporation on terms more favorable than those offered to the general public—

(1) in a public offering designed to transfer ownership of the Corporation to private investors,

(2) pursuant to any agreement, arrangement, or understanding entered into before the privatization date, or

(3) before the election of the directors of the private corporation.

(b) OWNERSHIP LIMITATION.—Immediately following the consummation of the transaction or series of transactions pursuant to which 100 percent of the ownership of the Corporation is transferred to private investors, and for a period of three years thereafter, no person may acquire, directly or indirectly, beneficial ownership of securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation. The foregoing limitation shall not apply to—

(1) any employee stock ownership plan of the Corporation,

(2) members of the underwriting syndicate purchasing shares in stabilization transactions in connection with the privatization, or

(3) in the case of shares beneficially held in the ordinary course of business for others, any commercial bank, broker-dealer, or clearing agency.

SEC. 5212. URANIUM TRANSFERS AND SALES.

(a) TRANSFERS AND SALES BY THE SECRETARY.—The Secretary shall not provide enrichment services or transfer or sell any uranium (including natural uranium concentrates, natural uranium hexafluoride, or enriched uranium in any form) to any person except as consistent with this section.

(b) RUSSIAN HEU.—(1) On or before December 31, 1996, the United States Executive Agent under the Russian HEU Agreement shall transfer to the Secretary without charge title to an amount of uranium hexafluoride equivalent to the natural uranium component of low-enriched uranium derived from at least 18 metric tons of highly enriched uranium purchased from the Russian Executive Agent under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Secretary shall be based on a tails assay of 0.30 U^{235}*. Uranium hexafluoride transferred to the Secretary pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.*

(2) Within 7 years of the date of enactment of this Act, the Secretary shall sell, and receive payment for, the uranium hexafluoride transferred to the Secretary pursuant to paragraph (1). Such uranium hexafluoride shall be sold—

(A) at any time for use in the United States for the purpose of overfeeding;

(B) at any time for end use outside the United States;

(C) in 1995 and 1996 to the Russian Executive Agent at the purchase price for use in matched sales pursuant to the Suspension Agreement; or,

(D) in calendar year 2001 for consumption by end users in the United States not prior to January 1, 2002, in volumes not to exceed 3,000,000 pounds U_3O_8 *equivalent per year.*

(3) With respect to all enriched uranium delivered to the United States Executive Agent under the Russian HEU Agreement on or after January 1, 1997, the United States Executive Agent shall, upon request of the Russian Executive Agent, enter into an agreement to deliver concurrently to the Russian Executive Agent an amount of uranium hexafluoride equivalent to the natural uranium component of such uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Russian Executive Agent shall be based on a tails assay of 0.30 U^{235}*. Title to uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall transfer to the Russian Executive Agent upon delivery of such material to the Russian Executive Agent, with such delivery to take place at a North American facility designated by the Russian Executive Agent. Uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall be deemed under U.S. law for all purposes to be of Russian origin. Such uranium hexafluoride may be sold to any person or entity for delivery and use in the United States only as permitted in subsections (b)(5), (b)(6) and (b)(7) of this section.*

(4) In the event that the Russian Executive Agent does not exercise its right to enter into an agreement to take delivery of the natural uranium component of any low-enriched uranium, as contemplated in paragraph (3), within 90 days of the date such low-enriched uranium is delivered to the United States Executive Agent, or upon request of the Russian Executive Agent, then the United States Executive Agent shall engage an independent entity through a competitive selection process to auction an amount of uranium

hexafluoride or U_3O_8 (in the event that the conversion component of such hexafluoride has previously been sold) equivalent to the natural uranium component of such low-enriched uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. Such independent entity shall sell such uranium hexafluoride in one or more lots to any person or entity to maximize the proceeds from such sales, for disposition consistent with the limitations set forth in this subsection. The independent entity shall pay to the Russian Executive Agent the proceeds of any such auction less all reasonable transaction and other administrative costs. The quantity of such uranium hexafluoride auctioned shall be based on a tails assay of 0.30 U235. Title to uranium hexafluoride auctioned pursuant to this paragraph shall transfer to the buyer of such material upon delivery of such material to the buyer. Uranium hexafluoride auctioned pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(5) Except as provided in paragraphs (6) and (7), uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4), may not be delivered for consumption by end users in the United States either directly or indirectly prior to January 1, 1998, and thereafter only in accordance with the following schedule:

Annual maximum deliveries to end users

Year:	***(millions lbs. U_3O_8 equivalent)***
1998	*2*
1999	*4*
2000	*6*
2001	*8*
2002	*10*
2003	*12*
2004	*14*
2005	*16*
2006	*17*
2007	*18*
2008	*19*
2009 and each year thereafter	*20.*

(6) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time as Russian-origin natural uranium in a matched sale pursuant to the Suspension Agreement, and in such case shall not be counted against the annual maximum deliveries set forth in paragraph (5).

(7) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time for use in the United States for the purpose of overfeeding in the operations of enrichment facilities.

(8) Nothing in this subsection (b) shall restrict the sale of the conversion component of such uranium hexafluoride.

(9) The Secretary of Commerce shall have responsibility for the administration and enforcement of the limitations set forth in this subsection. The Secretary of Commerce may require any person to provide any certifications, information, or take any action that may be necessary to enforce these limitations. The United States Customs

Service shall maintain and provide any information required by the Secretary of Commerce and shall take any action requested by the Secretary of Commerce which is necessary for the administration and enforcement of the uranium delivery limitations set forth in this section.

(10) The President shall monitor the actions of the United States Executive Agent under the Russian HEU Agreement and shall report to the Congress not later than December 31 of each year on the effect the low-enriched uranium delivered under the Russian HEU Agreement is having on the domestic uranium mining, conversion, and enrichment industries, and the operation of the gaseous diffusion plants. Such report shall include a description of actions taken or proposed to be taken by the President to prevent or mitigate any material adverse impact on such industries or any loss of employment at the gaseous diffusion plants as a result of the Russian HEU Agreement.

(c) TRANSFERS TO THE CORPORATION.—(1) The Secretary shall transfer to the Corporation without charge up to 50 metric tons of enriched uranium and up to 7,000 metric tons of natural uranium from the Department of Energy's stockpile, subject to the restrictions in subsection (c)(2).

(2) The Corporation shall not deliver for commercial end use in the United States—

(A) any of the uranium transferred under this subsection before January 1, 1998;

(B) more than 10 percent of the uranium (by uranium hexafluoride equivalent content) transferred under this subsection or more than 4,000,000 pounds, whichever is less, in any calendar year after 1997; or

(C) more than 800,000 separative work units contained in low-enriched uranium transferred under this subsection in any calendar year.

(d) INVENTORY SALES.—(1) In addition to the transfers authorized under subsections (c) and (e), the Secretary may, from time to time, sell natural and low-enriched uranium (including low-enriched uranium derived from highly enriched uranium) from the Department of Energy's stockpile.

(2) Except as provided in subsections (b), (c), and (e), no sale or transfer of natural or low-enriched uranium shall be made unless—

(A) the President determines that the material is not necessary to national security needs,

(B) the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and

(C) the price paid to the Secretary will not be less than the fair market value of the material.

(e) GOVERNMENT TRANSFERS.—Notwithstanding subsection (d)(2), the Secretary may transfer or sell enriched uranium—

(1) to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to an-

other entity and the material does not meet commercial specifications;

(2) to any person for national security purposes, as determined by the Secretary; or

(3) to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

(f) SAVINGS PROVISION.—Nothing in this chapter shall be read to modify the terms of the Russian HEU Agreement.

SEC. 5213. LOW-LEVEL WASTE.

(a) RESPONSIBILITY OF DOE.—(1) The Secretary, at the request of the generator, shall accept for disposal low-level radioactive waste, including depleted uranium if it were ultimately determined to be low-level radioactive waste, generated by the Corporation as a result of the operations of the gaseous diffusion plants or as a result of the treatment of such wastes at a location other than a gaseous diffusion plant. The terms and conditions for such service shall be no more favorable than those the Secretary offers any other generator of such wastes generated by uranium enrichment plants licensed by the Nuclear Regulatory Commission.

(2) The Secretary shall recover the cost of providing the service in paragraph (1), including a pro rata share of any capital costs, by charging the Corporation a fee for such service in an amount equal to the price charged uranium enrichment plants licensed by the Nuclear Regulatory Commission, but in no event shall the Secretary charge any generator more than an amount equal to that which would be charged by commercial, state, regional, or interstate compact entities for disposal of such waste.

(b) AGREEMENTS WITH OTHER PERSONS.—The Corporation or any other generator may also enter into agreements for the disposal of low-level radioactive waste subject to subsection (a) with any person other than the Secretary that is authorized by applicable laws and regulations to dispose of such wastes, but shall have no authority under this or any other law to require a State or interstate compact to treat, store, or dispose of such waste in a State or interstate compact facility without the State or compact's consent.

SEC. 5214. AVLIS.

(a) EXCLUSIVE RIGHT TO COMMERCIALIZE.—The Corporation shall have the exclusive commercial right to deploy and use any AVLIS patents, processes, and technical information owned or controlled by the Government, upon completion of a royalty agreement with the Secretary.

(b) TRANSFER OF RELATED PROPERTY TO CORPORATION.—

(1) IN GENERAL.—To the extent requested by the Corporation and subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the President shall transfer without charge to the Corporation all of the right, title, or interest in and to property owned by the United States under control or custody of the Secretary that is directly related to and materially useful in the performance of the Corporation's purposes regarding AVLIS and alternative technologies for uranium enrichment, including—

(A) facilities, equipment, and materials for research, development, and demonstration activities; and

(B) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases.

(2) EXCEPTION.—Facilities, real estate, improvements, and equipment related to the gaseous diffusion, and gas centrifuge, uranium enrichment programs of the Secretary shall not transfer under paragraph (1)(B).

(3) EXPIRATION OF TRANSFER AUTHORITY.—The President's authority to transfer property under this subsection shall expire upon the privatization date.

(c) LIABILITY FOR PATENT AND RELATED CLAIMS.—With respect to any right, title, or interest provided to the Corporation under subsection (a) or (b), the Corporation shall have sole liability for any payments made or awards under section 157 b. (3) of the Atomic Energy Act of 1954 (42 U.S.C. 2187(b)(3)), or any settlements or judgments involving claims for alleged patent infringement. Any royalty agreement under subsection (a) of this section shall provide for a reduction of royalty payments to the Secretary to offset any payments, awards, settlements, or judgments under this subsection.

SEC. 5215. APPLICATION OF CERTAIN LAWS.

(a) OSHA.—(1) As of the privatization date, the private corporation shall be subject to and comply with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(2) The Nuclear Regulatory Commission and the Occupational Safety and Health Administration shall, within 90 days after the date of enactment of this Act, enter into a memorandum of agreement to govern the exercise of their authority over occupational safety and health hazards at the gaseous diffusion plants, including inspection, investigation, enforcement, and rulemaking relating to such hazards.

(b) ANTITRUST LAWS.—For purposes of the antitrust laws, the performance by the private corporation of a "matched import" contract under the Suspension Agreement shall be considered to have occurred prior to the privatization date, if at the time of privatization, such contract had been agreed to by the parties in all material terms and confirmed by the Secretary of Commerce under the Suspension Agreement.

(c) ENERGY REORGANIZATION ACT REQUIREMENTS.—(1) The private corporation and its contractors and subcontractors shall be subject to the provisions of section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851) to the same extent as an employer subject to such section.

(2) With respect to the operation of the facilities leased by the private corporation, section 206 of the Energy Reorganization Act of 1974 (42 U.S.C. 5846) shall apply to the directors and officers of the private corporation.

SEC. 5216. AMENDMENTS TO THE ATOMIC ENERGY ACT.

(a) REPEAL.—(1) Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 U.S.C. 2297–2297e-7) are repealed as of the privatization date.

(2) The table of contents of such Act is amended as of the privatization date by striking the items referring to sections repealed by paragraph (1).

(b) NRC LICENSING.—(1) Section 11v. of the Atomic Energy Act of 1954 (42 U.S.C. 2014v.) is amended by striking "or the construction and operation of a uranium enrichment facility using Atomic Vapor Laser Isotope Separation technology".

(2) Section 193 of the Atomic Energy Act of 1954 (42 U.S.C. 2243) is amended by adding at the end the following:

"(f) LIMITATION.—No license or certificate of compliance may be issued to the United States Enrichment Corporation or its successor under this section or sections 53, 63, or 1701, if the Commission determines that—

"(1) the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

"(2) the issuance of such a license or certificate of compliance would be inimical to—

"(A) the common defense and security of the United States; or

"(B) the maintenance of a reliable and economical domestic source of enrichment services.".

(3) Section 1701(c)(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2297f(c)(2)) is amended to read as follows:

"(2) PERIODIC APPLICATION FOR CERTIFICATE OF COMPLIANCE.—The Corporation shall apply to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1) periodically, as determined by the Commission, but not less than every 5 years. The Commission shall review any such application and any determination made under subsection (b)(2) shall be based on the results of any such review.".

(4) Section 1702(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2297f–1(a)) is amended—

(1) by striking "other than" and inserting "including", and

(2) by striking "sections 53 and 63" and inserting "sections 53, 63, and 193".

(c) JUDICIAL REVIEW OF NRC ACTIONS.—Section 189b. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(b)) is amended to read as follows:

"b. The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28, United States Code and chapter 7 of title 5, United States Code:

"(1) Any final order entered in any proceeding of the kind specified in subsection (a).

"(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

"(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act.

"(4) Any final determination under section 1701(c) relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act, are in compliance with the Commission's stand-

ards governing the gaseous diffusion plants and all applicable laws.".

(d) CIVIL PENALTIES.—Section 234 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2282(a)) is amended by—

(1) striking "any licensing provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109" and inserting: "any licensing or certification provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701"; and

(2) by striking "any license issued thereunder" and inserting: "any license or certification issued thereunder".

(e) REFERENCES TO THE CORPORATION.—Following the privatization date, all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

SEC. 5217. AMENDMENTS TO OTHER LAWS.

(a) DEFINITION OF GOVERNMENT CORPORATION.—As of the privatization date, section 9101(3) of title 31, United States Code, is amended by striking subparagraph (N) as added by section 902(b) of Public Law 102–486.

(b) DEFINITION OF THE CORPORATION.—Section 1018(1) of the Energy Policy Act of 1992 (42 U.S.C. 2296b–7(1) is amended by inserting "or its successor" before the period.

CHAPTER 2—DEPARTMENT OF ENERGY

SEC. 5221. SALE OF DOE ASSETS

(a) ASSET MANAGEMENT AND DISPOSITION PROGRAM.—

(1) IN GENERAL.—In order to maximize the use of Department of Energy assets and to reduce overhead and other costs related to asset management at the Department's facilities and laboratories, the Secretary of Energy shall conduct an asset management and disposition program that will result in not less than $225,000,000 in receipts and savings by October 1, 2000.

(2) ITEMS TO BE INCLUDED.—The program shall include an inventory of assets in the care of the Department and its contractors; the recovery, reuse, and stewardship of assets; and disposition of a minimum of 1,139,000,000 pounds of fuel, 136,000 tons of chemicals and industrial gases, 557,000 tons of scrap metal, 14,000 radiation sources, 17,000 pieces of major equipment, 11,000 pounds of precious metals, and 91,000,000 pounds of base metals.

(b) FEDERAL PROPERTY AND ADMINSTRATIVE SERVICES ACT.—The disposition of assets under this section is not subject to section 202 or 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) or section 13 of the Surplus Property Act of 1944 (50 U.S.C. App. 1622). In order to avoid market disruptions, the Secretary shall consult with appropriate executive agencies with respect to dispositions under this section.

(c) DISPOSITION OF PROCEEDS.—After deduction of administrative costs of disposition under this section not to exceed $7,000,000 per year, the remainder of the proceeds from dispositions under this subpart shall be returned to the Treasury as miscellaneous receipts.

There shall be established a new receipt account in the Treasury for proceeds of asset sales under this section.

SEC. 5222. SALE OF WEEKS ISLAND OIL.

Notwithstanding section 161 of the Energy Policy and Conservation Act (42 U.S.C. 6241), the Secretary of Energy shall draw down and sell 32,000,000 barrels of oil contained in the Weeks Island Strategic Petroleum Reserve Facility. The Secretary shall, to the greatest extent practicable, sell oil from the reserve in a manner that minimizes the impact of such sale upon supply levels and market forces.

SEC. 5223. LEASE OF EXCESS STRATEGIC PETROLEUM RESERVE CAPACITY.

(a) AMENDMENT.—Part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231 et seq.) is amended by adding at the end the following:

"USE OF UNDERUTILIZED FACILITIES

"SEC. 168. (a) AUTHORITY.—Notwithstanding any other provision of this title, the Secretary, by lease or otherwise, for any term and under such other conditions as the Secretary considers necessary or appropriate, may store in underutilized Strategic Petroleum Reserve facilities petroleum product owned by a foreign government or its representative. Petroleum products stored under this section are not part of the Strategic Petroleum Reserve and may be exported without license from the United States.

"(b) PROTECTION OF FACILITIES.—All agreements entered into pursuant to subsection (a) shall contain provisions providing for fees to fully compensate the United States for all costs of storage and removals of petroleum products, including the cost of replacement facilities necessitated as a result of any withdrawals.

"(c) ACCESS TO STORED OIL.—The Secretary shall ensure that agreements to store petroleum products for foreign governments or their representatives do not affect the ability of the United States to withdraw, distribute, or sell petroleum from the Strategic Petroleum reserve in response to an energy emergency or to the obligations of the United States under the Agreement on an International Energy Program.

"(d) AVAILABILITY OF FUNDS.—Beginning in fiscal year 2001 and in each fiscal year thereafter except for fiscal years 2003 and 2004, 50 percent of the funds resulting from the leasing of Strategic Petroleum Reserve facilities authorized by subsection (a) shall be available to the Secretary of Energy without further appropriation for the purchase of oil for the Strategic Petroleum Reserve.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of part B of title I of the Energy Policy and Conservation Act is amended by adding at the end the following:

"Sec. 168. Use of underutilized facilities.".

Subtitle C—Natural Resources

CHAPTER 1—DEPARTMENT OF THE INTERIOR CONVEYANCES

Subchapter A—California Directed Land Sale

SEC. 5301. CONVEYANCE OF PROPERTY.

All right, title and interest of the United States in the property depicted on a map designated USGS 7.5 minute quadrangle, west of Flattop Mtn, CA 1984, entitled "Location Map for Ward Valley Site", located in San Bernardino Meridian, Township 9 North, Range 19 East, and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed to the Department of Health Services of the State of California upon the tendering of $500,100 on behalf of the State of California and the release of the United States by the State of California from any liability for claims relating to the property described in this section and, as part of the consideration paid for such property, such conveyance is declared to meet and fully comply with any otherwise applicable provisions of section 7 of Endangered Species Act of 1973 (16 U.S.C. 1536) and the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Secretary of the Interior shall issue evidence of title pursuant to this Act notwithstanding any other provision of law.

Subchapter B—Helium Reserves

SEC. 5311. SHORT TITLE.

This subchapter may be cited as the "Helium Act of 1995".

SEC. 5312. AMENDMENT OF HELIUM ACT.

Except as otherwise expressly provided, whenever in this chapter 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 Helium Act (50 U.S.C. 167 to 167n).

SEC. 5313. AUTHORITY OF SECRETARY.

Sections 3, 4, and 5 are amended to read as follows:

"SEC. 3. AUTHORITY OF SECRETARY.

"(a) EXTRACTION AND DISPOSAL OF HELIUM ON FEDERAL LANDS.—

"(1) IN GENERAL.—The Secretary may enter into agreements with private parties for the recovery and disposal of helium on Federal lands upon such terms and conditions as the Secretary deems fair, reasonable, and necessary.

"(2) LEASEHOLD RIGHTS.—The Secretary may grant leasehold rights to any such helium.

"(3) LIMITATION.—The Secretary may not enter into any agreement by which the Secretary sells such helium other than to a private party with whom the Secretary has an agreement for recovery and disposal of helium.

"(4) REGULATIONS.—Agreements under paragraph (1) may be subject to such regulations as may be prescribed by the Secretary.

"(5) EXISTING RIGHTS.—An agreement under paragraph (1) shall be subject to any rights of any affected Federal oil and gas lessee that may be in existence prior to the date of the agreement.

"(6) TERMS AND CONDITIONS.—An agreement under paragraph (1) (and any extension or renewal of an agreement) shall contain such terms and conditions as the Secretary may consider appropriate.

"(7) PRIOR AGREEMENTS.—This subsection shall not in any manner affect or diminish the rights and obligations of the Secretary and private parties under agreements to dispose of helium produced from Federal lands in existence on the date of enactment of the Helium Act of 1995 except to the extent that such agreements are renewed or extended after that date.

"(b) STORAGE, TRANSPORTATION AND SALE.—The Secretary may store, transport, and sell helium only in accordance with this Act.

"SEC. 4. STORAGE, TRANSPORTATION, AND WITHDRAWAL OF CRUDE HELIUM.

"(a) STORAGE, TRANSPORTATION AND WITHDRAWAL.—The Secretary may store, transport and withdraw crude helium and maintain and operate crude helium storage facilities, in existence on the date of enactment of the Helium Act of 1995 at the Bureau of Mines Cliffside Field, and related helium transportation and withdrawal facilities.

"(b) CESSATION OF PRODUCTION, REFINING, AND MARKETING.—Not later than 18 months after the date of enactment of the Helium Act of 1995, the Secretary shall cease producing, refining, and marketing refined helium and shall cease carrying out all other activities relating to helium which the Secretary was authorized to carry out under this Act before the date of enactment of the Helium Act of 1995, except activities described in subsection (a).

"(c) DISPOSAL OF FACILITIES.—

"(1) IN GENERAL.—Subject to paragraph (5), not later than 24 months after the cessation of activities referred to in section (b) of this section, the Secretary shall designate as excess property and dispose of all facilities, equipment, and other real and personal property, and all interests therein, held by the United States for the purpose of producing, refining and marketing refined helium.

"(2) APPLICABLE LAW.—The disposal of such property shall be in accordance with the Federal Property and Administrative Services Act of 1949.

"(3) PROCEEDS.—All proceeds accruing to the United States by reason of the sale or other disposal of such property shall be treated as moneys received under this chapter for purposes of section 6(f).

"(4) COSTS.—All costs associated with such sale and disposal (including costs associated with termination of personnel) and with the cessation of activities under subsection (b) shall be paid from amounts available in the helium production fund established under section 6(f).

"(5) EXCEPTION.—Paragraph (1) shall not apply to any facilities, equipment, or other real or personal property, or any interest therein, necessary for the storage, transportation and withdrawal of crude helium or any equipment, facilities, or other real or personal property, required to maintain the purity, quality control, and quality assurance of crude helium in the Bureau of Mines Cliffside Field.

"(d) EXISTING CONTRACTS.—

"(1) IN GENERAL.—All contracts that were entered into by any person with the Secretary for the purchase by the person from the Secretary of refined helium and that are in effect on the date of the enactment of the Helium Act of 1995 shall remain in force and effect until the date on which the refining operations cease, as described in subsection (b).

"(2) COSTS.—Any costs associated with the termination of contracts described in paragraph (1) shall be paid from the helium production fund established under section 6(f).

"SEC. 5. FEES FOR STORAGE, TRANSPORTATION AND WITHDRAWAL.

"(a) IN GENERAL.—Whenever the Secretary provides helium storage withdrawal or transportation services to any person, the Secretary shall impose a fee on the person to reimburse the Secretary for the full costs of providing such storage, transportation, and withdrawal.

"(b) TREATMENT.—All fees received by the Secretary under subsection (a) shall be treated as moneys received under this Act for purposes of section 6(f).".

SEC. 5314. SALE OF CRUDE HELIUM.

(a) Subsection 6(a) is amended by striking "from the Secretary" and inserting "from persons who have entered into enforceable contracts to purchase an equivalent amount of crude helium from the Secretary".

(b) Subsection 6(b) is amended—

(1) by inserting "crude" before "helium"; and

(2) by adding the following at the end: "Except as may be required by reason of subsection (a), sales of crude helium under this section shall be in amounts as the Secretary determines, in consultation with the helium industry, necessary to carry out this subsection with minimum market disruption.".

(c) Subsection 6(c) is amended—

(1) by inserting "crude" after "Sales of"; and

(2) by striking "together with interest as provided in this subsection" and all that follows through the end of the subsection and inserting "all funds required to be repaid to the United States as of October 1, 1995 under this section (referred to in this subsection as 'repayable amounts'). The price at which crude helium is sold by the Secretary shall not be less than the amount determined by the Secretary by—

"(1) dividing the outstanding amount of such repayable amounts by the volume (in million cubic feet) of crude helium owned by the United States and stored in the Bureau of Mines Cliffside Field at the time of the sale concerned, and

"(2) adjusting the amount determined under paragraph (1) by the Consumer Price Index for years beginning after December 31, 1995.".

(d) Subsection 6(d) is amended to read as follows:

"(d) EXTRACTION OF HELIUM FROM DEPOSITS ON FEDERAL LANDS.—All moneys received by the Secretary from the sale or disposition of helium on Federal lands shall be paid to the Treasury and credited against the amounts required to be repaid to the Treasury under subsection (c).".

(e) Subsection 6(e) is repealed.

(f) Subsection 6(f) is amended—

(1) by striking "(f)" and inserting "(e)(1)"; and

(2) by adding the following at the end:

"(2)(A) Within 7 days after the commencement of each fiscal year after the disposal of the facilities referred to in section 4(c), all amounts in such fund in excess of $2,000,000 (or such lesser sum as the Secretary deems necessary to carry out this Act during such fiscal year) shall be paid to the Treasury and credited as provided in paragraph (1).

"(B) On repayment of all amounts referred to in subsection (c), the fund established under this section shall be terminated and all moneys received under this Act shall be deposited in the general fund of the Treasury.".

SEC. 5315. ELIMINATION OF STOCKPILE.

Section 8 is amended to read as follows:

"SEC. 8. ELIMINATION OF STOCKPILE.

"(a) STOCKPILE SALES.—

"(1) COMMENCEMENT.—Not later than January 1, 2005, the Secretary shall commence offering for sale crude helium from helium reserves owned by the United States in such amounts as would be necessary to dispose of all such helium reserves in excess of 600,000,000 cubic feet on a straight-line basis between such date and January 1, 2015.

"(2) TIMES OF SALE.—The sales shall be at such times during each year and in such lots as the Secretary determines, in consultation with the helium industry, to be necessary to carry out this subsection with minimum market disruption.

"(3) PRICE.—The price for all sales under paragraph (1), as determined by the Secretary in consultation with the helium industry, shall be such price as will ensure repayment of the amounts required to be repaid to the Treasury under section 6(c).

"(b) DISCOVERY OF ADDITIONAL RESERVES.—The discovery of additional helium reserves shall not affect the duty of the Secretary to make sales of helium under subsection (a).".

SEC. 5316. REPEAL OF AUTHORITY TO BORROW.

Sections 12 and 15 are repealed.

SEC. 5317. LAND CONVEYANCE IN POTTER COUNTY, TEXAS.

(a) IN GENERAL.—The Secretary of the Interior shall transfer all right, title, and interest of the United States in and to the parcel of land described in subsection (b) to the Texas Plains Girl Scout

Council for consideration of $1, reserving to the United States such easements as may be necessary for pipeline rights-of-way.

(b) LAND DESCRIPTION.—The parcel of land referred to in subsection (a) is all those certain lots, tracts or parcels of land lying and being situated in the County of Potter and State of Texas, and being the East Three Hundred Thirty-One (E331) acres out of Section Seventy-eight (78) in Block Nine (9), B.S. & F. Survey, (some times known as the G.D. Landis pasture) Potter County, Texas, located by certificate No. 1/39 and evidenced by letters patents Nos. 411 and 412 issued by the State of Texas under date of November 23, 1937, and of record in Vol. 66A of the Patent Records of the State of Texas. The metes and bounds description of such lands is as follows:

(1) FIRST TRACT.—One Hundred Seventy-one (171) acres of land known as the North part of the East part of said survey Seventy-eight (78) aforesaid, described by metes and bounds as follows:

Beginning at a stone 20 x 12 x 3 inches marked X, set by W.D. Twichell in 1905, for the Northeast corner of this survey and the Northwest corner of Section 59;

Thence, South 0 degrees 12 minutes East with the West line of said Section 59, 999.4 varas to the Northeast corner of the South 160 acres of East half of Section 78;

Thence, North 89 degrees 47 minutes West with the North line of the South 150 acres of the East half, 956.8 varas to a point in the East line of the West half Section 78;

Thence, North 0 degrees 10 minutes West with the East line of the West half 999.4 varas to a stone 18 x 14 x 3 inches in the middle of the South line of Section 79;

Thence, South 89 degrees 47 minutes East 965 varas to the place of beginning.

(2) SECOND TRACT.—One Hundred Sixty (160) acres of land known as the South part of the East part of said survey No. Seventy-eight (78) described by metes and bounds as follows:

Beginning at the Southwest corner of Section 59, a stone marked X and a pile of stones; Thence, North 89 degrees 47 minutes West with the North line of Section 77, 966.5 varas to the Southeast corner of the West half of Section 78; Thence, North 0 degrees 10 minutes West with the East line of the West half of Section 78;

Thence, South 89 degrees 47 minutes East 965.8 varas to a point in the East line of Section 78;

Thence, South 0 degrees 12 minutes East 934.6 varas to the place of beginning.

Containing an area of 331 acres, more or less.

CHAPTER 2—ARCTIC COASTAL PLAIN LEASING AND REVENUE ACT

SEC. 5312. SHORT TITLE.

This chapter may be cited as the 'Arctic Coastal Plain Leasing and Revenue Act of 1995".

SEC. 5322. DEFINITIONS.

When used in this chapter the term—

(1) "Coastal Plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated August 1980, as referenced in section 1002(b) of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142(b)(1)) comprising approximately 1, 549,000 acres; and

(2) "Secretary" except as otherwise provided, means the Secretary of the Interior or the Secretary's designee.

SEC. 5333. LEASING PROGRAM FOR LANDS WITHIN THE COASTAL PLAIN.

(a) AUTHORIZATION.—The Congress hereby authorizes and directs the Secretary, acting through the Bureau of Land Management in consultation with the Fish and Wildlife Service and other appropriate Federal officers and agencies, to take such actions as are necessary to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain and to administer the provisions of this chapter through regulations, lease terms, conditions, restrictions, prohibitions, stipulations and other provisions that ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, subsistence resources, and the environment, and shall require the application of the best commercially available technology for oil and gas exploration, development, and production, on all new exploration, development, and production operations, and whenever practicable, on existing operations, and in a manner to ensure the receipt of fair market value by the public for the mineral resources to be leased.

(b) REPEAL.—The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) are hereby repealed.

(c) COMPATIBILITY.—Congress hereby determines that the oil and gas leasing program and activities authorized by this section in the Coastal Plain are compatible with the purposes for which the Arctic National Wildlife Refuge was established, and that no further findings or decisions are required to implement this determination.

(d) SOLE AUTHORITY.—This chapter shall be the sole authority for leasing on the Coastal Plain. Provided, That nothing in this chapter shall be deemed to expand or limit state and local regulatory authority.

(e) FEDERAL LAND.—The Coastal Plain shall be considered "Federal land" for the purposes of the Federal Oil and Gas Royalty Management Act of 1982 .

(f) SPECIAL AREAS.—The Secretary, after consultation with the State of Alaska, City of Kaktovik, and the North Slope Borough, is authorized to designate up to a total of 45,000 acres of the Coastal Plain as Special Areas and close such areas to leasing if the Secretary determines that these Special Areas are of such unique character and interest so as to require special management and regulatory protection. The Secretary may, however, permit leasing of all or portions of any Special Areas within the Coastal Plain by setting lease terms that limit or condition surface use and occupancy by lessees of such lands but permit the use of horizontal drilling tech-

nology from sites on leases located outside the designated Special Areas.

(g) LIMITATION ON CLOSED AREAS.—The Secretary's sole authority to close lands within the Coastal Plain to oil and gas leasing and to exploration, development, and production is that set forth in this subtitle.

(h) CONVEYANCE.—In order to maximize federal revenues by removing clouds on title of lands and clarifying land ownership patterns within the Coastal Plain, the Secretary, notwithstanding the provisions of section 1302(h)(2) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192(h)(2)), is authorized and directed to convey (1) to the Kaktovik Inupiat Corporation the surface estate of the lands described in paragraph 2 of Public Land Order 6959, to the extent necessary to fulfill the corporation's entitlement under section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611), and (2) to the Arctic Slope Regional Corporation the subsurface estate beneath such surface estate pursuant to the August 9, 1983, agreement between the Arctic Slope Regional Corporation and the United States of America.

SEC. 5334. RULES AND REGULATIONS.

(a) PROMULGATION.—The Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of this chapter, including rules and regulations relating to protection of the fish and wildlife, their habitat, subsistence resources, and the environment of the Coastal Plain. Such rules and regulations shall be promulgated no later than fourteen months after the date of enactment of this chapter and shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this chapter and all operations on the Coastal Plain related to the leasing, exploration, development and production of oil and gas.

(b) REVISION OF REGULATIONS.—The Secretary shall periodically review and, if appropriate, revise the rules and regulations issued under subsection (a) of this section to reflect any significant biological, environmental, or engineering data which come to the Secretary's attention.

SEC. 5335. ADEQUACY OF THE DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT.

The "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142) and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is hereby found by the Congress to be adequate to satisfy the legal and procedural requirements of the National Environmental Policy Act of 1969 with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of the leasing program authorized by this chapter, to conduct the first lease sale and any subsequent lease sale authorized by this chapter, and to grant rights-of-way and easements to carry out the purposes of this chapter.

SEC. 5336. LEASE SALES.

(a) LEASE SALES.—Lands may be leased pursuant to the provisions of this chapter to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended (30 U.S.C. 181).

(b) PROCEDURES.—The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal Plain for inclusion in, or exclusion (as provided in subsection (c)) from, a lease sale; and

(2) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale.

(c) LEASE SALES ON COASTAL PLAIN.—The Secretary shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they shall occur after the nomination process provided for in subsection (b) of this section. For the first lease sale, the Secretary shall offer for lease those acres receiving the greatest number of nominations, but no less than two hundred thousand acres and no more than three hundred thousand acres shall be offered. If the total acreage nominated is less than two hundred thousand acres, the Secretary shall include in such sale any other acreage which he believes has the highest resource potential, but in no event shall more than three hundred thousand acres of the Coastal Plain be offered in such sale. With respect to subsequent lease sales, the Secretary shall offer for lease no less than two hundred thousand acres of the Coastal Plain. The initial lease sale shall be held within twenty months of the date of enactment of this chapter. The second lease sale shall be held no later than twenty-four months after the initial sale, with additional sales conducted no later than twelve months thereafter so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

SEC. 5337. GRANT OF LEASES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive cash bonus bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.

(b) ANTITRUST REVIEW.—Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to perform an antitrust review of the results of such lease sale on the likely effects the issuance of such leases would have on competition and the Attorney General shall advise the Secretary with respect to such review, including any recommendation for the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation inconsistent with the antitrust laws.

(c) SUBSEQUENT TRANSFERS.—No lease issued under this chapter may be sold, exchanged, assigned, sublet, or otherwise transferred except with the approval of the Secretary. Prior to any such

approval the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

(d) IMMUNITY.—Nothing in this chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(e) DEFINITIONS.—As used in this section, the term—

(1) "antitrust review" shall be deemed an "antitrust investigation" for the purposes of the Antitrust Civil Process Act (15 U.S.C. 1311); and

(2) "antitrust laws" means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12) as amended.

SEC. 5338. LEASE TERMS AND CONDITIONS.

An oil or gas lease issued pursuant to this chapter shall—

(1) be for a tract consisting of a compact area not to exceed five thousand seven hundred sixty acres, or nine surveyed or protracted sections which shall be as compact in form as possible.

(2) be for an initial period of ten years and shall be extended for so long thereafter as oil or gas is produced in paying quantities from the lease or unit area to which the lease is committed or for so long as drilling or reworking operations, as approved by the Secretary, are conducted on the lease or unit area;

(3) require the payment of royalty as provided for in section 5337 of this chapter;

(4) require that exploration activities pursuant to any lease issued or maintained under this chapter shall be conducted in accordance with an exploration plan or a revision of such plan approved by the Secretary;

(5) require that all development and production pursuant to a lease issued or maintained pursuant to this chapter shall be conducted in accordance with development and production plans approved by the Secretary;

(6) require posting of bond as required by section 5339 of this chapter;

(7) provide that the Secretary may close, on a seasonal basis, portions of the Coastal Plain to exploratory drilling activities as necessary to protect caribou calving areas and other species of fish and wildlife;

(8) contain such provisions relating to rental and other fees as the Secretary may prescribe at the time of offering the area for lease;

(9) provide that the Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of this chapter in the interest of conservation of the resource or where there is no available system to transport the resource. If such a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto;

(10) provide that whenever the owner of a nonproducing lease fails to comply with any of the provisions of this chapter, or of any applicable provision of Federal or State environmental

law, or of the lease, or of any regulation issued under this chapter, such lease may be canceled by the Secretary if such default continues for more than thirty days after mailing of notice by registered letter to the lease owner at the lease owner's record post office address of record;

(11) provide that whenever the owner of any producing lease fails to comply with any of the provisions of this chapter, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this chapter, such lease may be forfeited and canceled by any appropriate proceeding brought by the Secretary in any United States district court having jurisdiction under the provisions of this chapter;

(12) provide that cancellation of a lease under this chapter shall in no way release the owner of the lease from the obligation to provide for reclamation of the lease site;

(13) allow the lessee, at the discretion of the Secretary, to make written relinquishment of all rights under any lease issued pursuant to this chapter. The Secretary shall accept such relinquishment by the lessee of any lease issued under this chapter where there has not been surface disturbance on the lands covered by the lease;

(14) provide that for the purpose of conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof, and in order to avoid the unnecessary duplication of facilities, to protect the environment of the Coastal Plain, and to protect correlative rights, the Secretary shall require that, to the greatest extent practicable, lessees unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of such pool, field, or like area, or any part thereof, and the Secretary is also authorized and directed to enter into such agreements as are necessary or appropriate for the protection of the United States against drainage;

(15) require that the holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, production or transportation activities on a lease within the Coastal Plain by the holder of a lease or as a result of activities conducted on the lease by any of the leaseholder's subcontractors or agents;

(16) provide that the holder of a lease may not delegate or convey, by contract or otherwise, the reclamation responsibility and liability to another party without the express written approval of the Secretary;

(17) provide that the standard of reclamation for lands required to be reclaimed under this chapter be, as nearly as practicable, a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary;

(18) contain the terms and conditions relating to protection of fish and wildlife, their habitat, and the environment, as required by section 5333(a) of this chapter;

(19) provide that the holder of a lease, its agents, and contractors use best efforts to provide a fair share, as determined by the level of obligation previously agreed to in the 1974 agreement implementing Section 29 of the Federal Agreement and Grant of Right of Way for the Operation of the Trans-Alaska Pipeline, of employment and contracting for Alaska Natives and Alaska Native Corporations from throughout the State; and

(20) contain such other provisions as the Secretary determines necessary to ensure compliance with the provisions of this chapter and the regulations issued under this chapter.

SEC. 5339. BONDING REQUIREMENTS TO ENSURE FINANCIAL RESPONSIBILITY OF LESSEE AND AVOID FEDERAL LIABILITY.

(a) REQUIREMENT.—The Secretary 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. Such bond, surety, or financial arrangement is in addition to, and not in lieu, of any bond, surety, or financial arrangement required by any other regulatory authority or required by any other provision of law.

(b) AMOUNT.—The bond, surety, or financial arrangement shall be in an amount—

(1) to be determined by the Secretary to provide for reclamation of the lease site in accordance with an approved or revised exploration or development and production plan; plus

(2) set by the Secretary consistent with the type of operations proposed, to provide the means for rapid and effective cleanup, and to minimize damages resulting from an oil spill, the escape of gas, refuse, domestic wastewater, hazardous or toxic substances, or fire caused by oil and gas activities.

(c) ADJUSTMENT.—In the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond, surety, or other financial arrangement to conform to such modified plan.

(d) DURATION.—The responsibility and liability of the lessee and its surety under the bond, surety, or other financial arrangement shall continue until such time as the Secretary determines that there has been compliance with the terms and conditions of the lease and all applicable law.

(e) TERMINATION.—Within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary, after consultation with affected Federal and State agencies, shall notify the lessee that the period of liability under the bond, surety, or other financial arrangement has been terminated.

SEC. 5340. OIL AND GAS INFORMATION.

(a) IN GENERAL.—(1) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this chapter shall provide the Secretary access to all data and information from any lease granted pursuant to this chapter (including processed and analyzed) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(2) If processed and analyzed information provided pursuant to paragraph (1) is provided in good faith by the lessee or permittee, such lessee or permittee shall not be responsible for any consequence of the use or of reliance upon such processed and analyzed information.

(3) Whenever any data or information is provided to the Secretary, pursuant to paragraph (1)—

(A) by a lessee or permittee, in the form and manner of processing which is utilized by such lessee or permittee in the normal conduct of business, the Secretary shall pay the reasonable cost of reproducing such data and information; or

(B) by a lessee or permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information.

(b) REGULATIONS.—The Secretary shall prescribe regulations to: (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained; and (2) set forth the time periods and conditions which shall be applicable to the release of such information.

SEC. 5341. EXPEDITED JUDICIAL REVIEW.

(a) Any complaint seeking judicial review of any provision in this chapter, or any other action of the Secretary under this chapter may be filed in any appropriate district court of the United States, and such complaint must be filed within ninety days from the date of the action being challenged, or after such date if such complaint is based solely on grounds arising after such ninetieth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint: Provided, That any complaint seeking judicial review of an action of the Secretary in promulgating any regulation under this chapter may be filed only in the United States Court of Appeals for the District of Columbia.

(b) Actions of the Secretary with respect to which review could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

SEC. 5342. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.

Notwithstanding Title XI of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3161 et seq.), the Secretary is authorized and directed to grant, in accordance with the provisions of Section 28(c) through (t) and (v) through (y) of the Mineral Leasing Act of 1920 (30 U.S.C. 185), rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such *terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, subsistence resources, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as to avoid unnecessary duplication of roads and pipelines. The regulations issued as required by section 5334 of this chapter shall include provisions granting rights-of-way and easements across the Coastal Plain.*

SEC. 5343. ENFORCEMENT OF SAFETY AND ENVIRONMENTAL REGULATIONS TO ENSURE COMPLIANCE WITH TERMS AND CONDITIONS OF LEASE.

(a) RESPONSIBILITY OF THE SECRETARY.—The Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this chapter.

(b) RESPONSIBILITY OF HOLDERS OF LEASE.—It shall be the responsibility of any holder of a lease under this chapter to—

(1) maintain all operations within such lease area in compliance with regulations intended to protect persons and property on, and fish and wildlife, their habitat, subsistence resources, and the environment of, the Coastal Plain; and

(2) allow prompt access at the site of any operations subject to regulation under this chapter to any appropriate Federal or State inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) ON-SITE INSPECTION.—The Secretary shall promulgate regulations to provide for—

(1) scheduled onsite inspection by the Secretary, at least twice a year, of each facility on the Coastal Plain which is subject to any environmental or safety regulation promulgated pursuant to this chapter or conditions contained in any lease issued pursuant to this chapter to assure compliance with such environmental or safety regulations or conditions; and

(2) periodic onsite inspection by the Secretary at least once a year without advance notice to the operator of such facility to assure compliance with all environmental or safety regulations.

SEC. 5344. NEW REVENUES.

(a) DISTRIBUTION OF REVENUES.—(1) Notwithstanding any other provision of law, all revenues received by the Federal Government from competitive bids, sales, bonuses, royalties, rents, fees, or interest derived from the leasing of oil and gas within the Coastal Plain shall be deposited into the Treasury of the United States, solely as provided in this subsection.

(2) Fifty percent of all revenues referred to in paragraph (1) shall be paid by the Secretary of the Treasury semiannually to the State of Alaska, on March 30 and September 30 of each year.

(3)(A) The Secretary of the Treasury is directed to monitor the revenues deposited into the Treasury from oil and gas leases issued under the authority of this chapter. Except as provided in subparagraph (B), all monies deposited into the Treasury from such oil and gas leases in excess of $2,600,000,000 shall be distributed as follows:

(i) Fifty percent shall be paid to the State of Alaska in the manner provided in this subsection; and

(ii) Fifty percent shall be deposited into a special fund established in the Treasury of the United States known as the "National Park, Refuge, and Fish and Wildlife Renewal and Protection Fund (hereinafter in this section referred to as the "renewal fund").

(B) Deposits into the renewal fund shall not exceed $250,000,000 over the life of the renewal fund. Monies in excess of such amount shall be deposited as miscellaneous receipts in the Treasury of the United States.

(C) Deposits into the renewal fund shall remain available until expended. The Secretary of the Treasury is directed to develop procedures for use of the renewal fund to ensure accountability and demonstrated results.

(b) USE OF RENEWAL FUND.—Monies from the renewal fund shall be made available to the Secretary of the Interior, without further appropriation, at the beginning of each fiscal year in which funds are available, and shall be expended by the Secretary as follows:

(1) Twenty-five percent shall be used for infrastructure needs at units of the National Park System, including but not limited to, facility refurbishment, repair and replacement, interpretive media and exhibit repair and replacement, and Infrastructure projects associated with park resource protection;

(2) Twenty-five percent shall be used for infrastructure needs at units of the National Wildlife Refuge System, including but not limited to, facility refurbishment, repair and replacement, interpretive media and exhibit repair and replacement, and infrastructure projects associated with refuge resource protection;

(3) Twenty-five percent shall be used for acquisition of important habitat lands for threatened or endangered species from owners of private property. Such lands shall be acquired solely on a willing seller basis and shall be managed by the Secretary for the conservation of such species pursuant to the terms of section 5 of the Endangered Species Act of 1973 (16 U.S.C. 1534); and

(4) Twenty-five percent shall be available for wetlands projects in accordance with the applicable provision of the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.).

(c) COMMUNITY ASSISTANCE.—There is hereby established a Community Assistance Fund in the Treasury into which shall be deposited $30,000,000 from revenues derived from the federal share of the first lease sale authorized under this chapter. The Secretary of the Treasury shall invest the funds in the Community Assistance Fund in interest bearing government securities. No more than $5,000,000 per year from the Community Assistance Fund, shall be available to the Secretary for distribution, upon application and without further appropriation, to organized boroughs, other municipal subdivisions of the State of Alaska, and recognized Indian Reorganization Act entities which are directly impacted by the exploration and production of oil and gas on the Coastal Plain author-

ized by this chapter to provide public and social services and facilities required in connection with such activities.

CHAPTER 3—WATER PROJECTS

Subchapter A—Irrigation Prepayment

SEC. 5351. AUTHORIZATION FOR PREPAYMENT OF CONSTRUCTION CHARGES.

Subsection 213(a) of the Reclamation Reform Act of 1982 (96 Stat. 1269, 43 U.S.C. 390mm(a)) is amended:

(1) by adding at the beginning:

"Notwithstanding any provision of Reclamation law or limitation contained in any repayment or water service contract, any person or district holding such a contract or receiving water under such a contract with the United States may prepay the construction costs referred to in this section either through accelerated or lump sum payments. For the purposes of such prepayment only, the project to which such contract applies is declared to be complete and the Secretary shall determine the repayment obligations associated with the construction costs of the project facilities so that accelerated payments or a lump sum payment may be made. The amount of any prepayment shall be calculated by discounting the remaining payments due under a contract in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget: Provided, That the discount shall be adjusted by any amounts necessary to compensate the Federal Government for the direct or indirect loss of future tax revenues if the individual or district plans to use federally tax-exempt financing for such prepayment.";

(2) by striking "lands in a district" and inserting: "lands in a district, or lands owned or leased by a person";

(3) by striking "obligation of a district" and inserting: "obligation of a district or a person";

(4) by striking "enactment of this Act." and inserting: "enactment of this Act or as otherwise provided for in this section. Any additional capital costs incurred after the date of such prepayment shall be recoverable as a separate obligation and shall not be considered to be a new or supplemental benefit for the purposes of this act nor cause the full cost pricing limitation of this Act or the ownership limitations contained in any provision of federal reclamation law to apply to the lands to which such capital costs apply.".

SEC. 5352. CONFORMING AMENDMENT.

Subsection 213 (c) of the Reclamation Reform Act of 1982 (43 U.S.C. 390 mm (c)) is repealed.

Subchapter B—Hetch Hetchy

SEC. 5353. HETCH HETCHY DAM.

Section 7 of the Act of December 19, 1913 (38 Stat. 242, chapter 4), is amended—

(1) by striking "$30,000" in the first sentence and inserting "$2,000,000"; and

(2) by amending the second and third sentences to read as follows: "These funds shall be placed in a separate fund by the United States and, notwithstanding any other provision of law, shall not be available for obligation or expenditure until appropriated by the Congress. The highest priority use of the funds shall be for annual operation of Yosemite National Park, with the remainder of any funds to be used to fund operations of other national parks in the State of California.".

Subchapter C—Collbran Project

SEC. 5355. COLLBRAN PROJECT.

(a) SHORT TITLE.—This subchapter may be cited as the "Collbran Project Unit Conveyance Act".

(b) DEFINITIONS.—For purposes of this subchapter:

(1) DISTRICTS.—The term "Districts" means the Ute Water Conservancy District and the Collbran Conservancy District (including their successors and assigns), which are political subdivisions of the State of Colorado.

(2) FEDERAL RECLAMATION LAWS.—The term "Federal reclamation laws" means the Act of June 17, 1902 and Acts amendatory thereof or supplementary thereto (32 Stat. 388, chapter 1093; 43 U.S.C. 371 et seq.) (including regulations adopted pursuant to those Acts).

(3) PROJECT.—The term "Project" means the Collbran Reclamation Project, as constructed and operated under the Act of July 3, 1952 (66 Stat. 325, chapter 565), including all property, equipment, and assets of or relating to the Project that are owned by the United States, including—

(A) Vega Dam and Reservoir (but not including The Vega Recreation Facilities);

(B) Leon-Park Dams and Feeder Canal;

(C) Southside Canal;

(D) East Fork Diversion Dam and Feeder Canal;

(E) Bonham-Cottonwood Pipeline;

(F) Snowcat Shed and Diesel Storage;

(G) Upper Molina Penstock and Power Plant;

(H) Lower Molina Penstock and Power Plant;

(I) the diversion structure in the tailrace of the Lower Molina Power Plant;

(J) all substations and switchyards;

(K) a non-exclusive easement for the use of existing easements or rights-of-way owned by the United States on or across nonfederal lands which are necessary for access to Project facilities;

(L) title to lands reasonably necessary for all Project facilities except for land described in subparagraph (K) or subsection (c)(1)(B) or (C);

(M) all permits and contract rights held by the Bureau of Reclamation, including, without limitation, contract or other rights relating to the operation, use, maintenance, repair, or replacement of the water storage reservoirs located on the Grand Mesa which are operated as a part of the Project;

(N) all equipment, parts inventories, and tools;

(O) all additions, replacements, betterments, and appurtenances to any of the above; and

(P) a copy of all data, plans, designs, reports, records, or other materials, whether in writing or in any form of electronic storage relating specifically to the Project.

(4) VEGA RECREATION FACILITIES.—The term "Vega Recreation Facilities" includes, but is not limited to, buildings, campgrounds, picnic areas, parking lots, fences, boat docks and ramps, electrical lines, water and sewer systems, trash and toilet facilities, roads and trails, and other structures and equipment used for State park purposes at and near Vega Reservoir such as recreation, maintenance and daily and overnight visitor use, and lands above the high water level of Vega Reservoir within the area previously defined by the Department of the Interior as the "Reservoir Area Boundary" which have not historically been utilized for Collbran Project water storage and delivery facilities, together with an easement for public access for recreational purposes to Vega Reservoir and the water surface thereof, and construction, operation, maintenance and replacement of such recreation facilities below the high water line. Such facilities shall also include improvements constructed or added as a result of the agreements referred to in section (c)(6).

(c) CONVEYANCE OF THE COLLBRAN PROJECT.—

(1) IN GENERAL.—

(A) CONVEYANCE TO DISTRICTS.—The Secretary of the Interior shall convey to the Districts all right, title, and interest of the United States in and to the Project, as described in subsection (b)(3), by quitclaim deed and bill of sale, without warranties, in the last quarter of fiscal year 2000, subject only to the requirements of this section. Until such conveyance occurs, the Bureau of Reclamation shall continue to provide for the operation, maintenance, repair, and replacement of Project facilities and the storage reservoirs on the Grand Mesa to the extent such responsibilities are the responsibility of the Bureau of Reclamation and have not been delegated to the Districts prior to the date of enactment of this Act or are delegated or transferred to the Districts by agreement thereafter, so that at the time of conveyance such facilities are in the same condition as, or better condition than, the condition of the facilities on the date of enactment of this Act.

(B) EASEMENTS ON NATIONAL FOREST SYSTEM LANDS.—The Secretary of Agriculture shall grant, in the last quarter of fiscal year 2000, subject only to the requirements of this section; (i) a non-exclusive easement on and across National Forest System lands to the Districts for ingress and egress on existing access routes to each existing component of the Project and to the existing storage reservoirs on the Grand Mesa which are operated as a part of the Project; (ii) a non-exclusive easement on National Forest System lands for the operation, use, maintenance, repair, and replacement, but not enlargement, of the existing storage reservoirs on the Grand Mesa to the owners and operators of such reservoirs which are operated as a part of the Project; which easement

may be exercised in the event that the existing land use authorizations for such storage reservoirs are restricted, terminated, relinquished, or abandoned, and which easement shall not be subject to conditions or requirements that interfere with or limit the use of such reservoirs for water supply or power purposes; and (iii) a non-exclusive easement to the Districts for the operation, use, maintenance, repair, and replacement, but not enlargement, of those components of Project facilities which are located on National Forest System lands, subject to the requirement that the Districts shall provide reasonable notice to and the opportunity for consultation with the designated representative of the Secretary of Agriculture for non-routine, non-emergency activities that occur on such easements.

(C) EASEMENTS TO DISTRICTS FOR SOUTHSIDE CANAL.—The Secretary of the Interior shall grant to the Districts, in the last quarter of fiscal year 2000, subject only to the requirements of this section, (i) a non-exclusive easement on and across lands administered by agencies within the Department of the Interior for ingress and egress on existing access routes to and along the Southside Canal, and (ii) a non-exclusive easement for the operation, use, maintenance, repair, and replacement of the Southside Canal, subject to the requirement that the Districts shall provide reasonable notice to and the opportunity for consultation with the designated representative of the Secretary of the Interior for non-routine, non-emergency activities that occur on such easements.

(2) RESERVATION.—The transfer of rights and interests pursuant to paragraphs (1)(A), (B), and (C) shall reserve to the United States all minerals, including hydrocarbons, and a perpetual right of public access over, across, under, and to the portions of the Project which on the date of enactment of this Act were open to public use for fishing, boating, hunting, and other outdoor recreation purposes and other public uses such as grazing, mineral development and logging: Provided, That the United States may allow for continued public use and enjoyment of such portions of the Project for recreational activities and other public uses conducted as of the date of enactment of this Act.

(3) CONVEYANCE TO STATE OF COLORADO.—All right, title, and interest in the Vega Recreation Facilities shall remain in the United States until the terms of the agreements referred to in paragraph (6) have been fulfilled by the United States. At such time, all right, title, and interest in the Vega Recreation Facilities shall be conveyed by the Secretary of the Interior to the State of Colorado, Division of Parks and Outdoor Recreation.

(4) PAYMENT.—

(A) IN GENERAL.—At the time of transfer, the Districts shall pay to the United States $12,900,000 ($12,300,000 of which represents the net present value of the outstanding repayment obligations for the Project), of which—

(i) $12,300,000 shall be deposited in the general fund of the United States Treasury; and

(ii) $600,000 shall be deposited in a special account in the United States Treasury and shall be available to the United States Fish and Wildlife Service, Region 6, without further appropriation, for use in funding Colorado operations and capital expenditures associated with the Grand Valley Water Management Project for the purpose of recovering endangered fish in the Upper Colorado River Basin, as identified in the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin, or such other component of the Recovery Implementation Program within Colorado that is selected with the concurrence of the Governor of the State of Colorado.

(B) SOURCE OF FUNDS.—Funds for the payment to the extent of the amount specified in subparagraph (A) shall not be derived from the issuance or sale, prior to the conveyance, of State or local bonds the interest on which is exempt from taxation under section 103 of the Internal Revenue Code of 1986.

(5) OPERATION OF PROJECT.—

(A) IN GENERAL.—The Project was authorized and constructed to place water to beneficial use for authorized purposes within the State of Colorado. The Project shall be operated and used by the Districts for a period of 40 years after the date of enactment of this Act for the purposes for which the Project was authorized under the Act of July 3, 1952 (66 Stat. 325, chapter 565). The Districts shall attempt to the extent practicable, taking into consideration historic Project operations, to notify the State of Colorado of changes in historic Project operations which may adversely affect State park operations.

(B) REQUIREMENTS.—During the 40-year period described in subparagraph (A)—

(i) the Districts shall annually submit to the Secretary of Agriculture and the Colorado Department of Natural Resources a plan for operation of the Project, which plan shall—

(I) report on Project operations for the previous year;

(II) provide a description of the manner of Project operations anticipated for the forthcoming year, which shall be prepared after consultation with the designated representatives of the Secretary of Agriculture, the Board of County Commissioners of Mesa County, Colorado, and the Colorado Department of Natural Resources; and

(III) certify that the Districts have operated and will operate and maintain the Project facilities in accordance with sound engineering practices; and

(ii) subject to subsection (d), all electric power generated by operation of the Project shall be made available to and be marketed by the Western Area Power Administration (including its successors or assigns).

(6) AGREEMENTS.—Conveyance of the Project shall be subject to the agreements between the United States and the State of Colorado dated August 22, 1994, and September 23, 1994, relating to the construction and operation of recreational facilities at Vega Reservoir, which agreements shall continue to be performed by the parties thereto according to the terms of the agreements.

(d) OPERATION OF THE POWER COMPONENT.—

(1) CONFORMITY TO HISTORIC OPERATIONS.—The power component and facilities of the Project shall be operated in substantial conformity with the historic operations of the power component and facilities (including recent operations in a peaking mode).

(2) POWER MARKETING.—

(A) EXISTING MARKETING ARRANGEMENT.—The Post-1989 Marketing Criteria, which provide for the marketing of power generated by the power component of the Project as part of the output of the Salt Lake City Area Integrated Projects, shall no longer be binding on the Project upon conveyance of the Project under subsection (c)(1).

(B) AFTER TERMINATION OF EXISTING MARKETING ARRANGEMENT.—

(i) IN GENERAL.—After the conveyance, the Districts shall offer all power produced by the power component of the Project to the Western Area Power Administration or its successors or assigns (referred to in this section as "Western"), which, in consultation with its affected preference customers, shall have the first right to purchase such power at the rates established in accordance with clause (ii). If Western declines to purchase the power after consultation with its affected preference customers, such power shall then be offered at the same rates first to Western's preference customers located in the Salt Lake City Area Integrated Projects marketing area (referred to in this section as the "SLCAIP preference customers"). Thereafter, such power may be sold to any other party: Provided, however, That no such sale may occur at rates less than rates established in accordance with clause (ii) unless such power is first offered at such lesser rate first to Western and then to its SLCAIP preference customers.

(ii) The rate for power initially offered to Western and its SLCAIP preference customers under this paragraph shall not exceed that required to produce revenues sufficient to provide for

(I) annual debt service and/or recoupment of the cost of capital for the amount specified in subsection (c)(4)(A)(i) of this section, less the sum of $310,000 (which is the net present value of the outstanding repayment obligation of the Collbran Conservancy District), and

(II) the cost of operation, maintenance, and replacement of the power component of the Project.

Such costs and rate shall be determined in a manner consistent with the current principles followed by the Secretary of the Interior and by Western in its annual power and repayment study.

(e) LICENSE.—

(1) Prior to the conveyance of the Project to the Districts, the Commission shall issue to the Districts a license or licenses as appropriate under part I of the Federal Power Act, as amended, (16 U.S.C. 791 et seq.), authorizing for a term of 40 years the continued operation and maintenance of the power component of the Project.

(2) The license issued pursuant to subsection (1):

(A) shall be for the purpose of operating, using, maintaining, repairing, and replacing the power component of the Project as authorized by the Act of July 3, 1952 (66 Stat. 325, chapter 565);

(B) shall be conditioned upon the requirement that the power component of the project continue to be operated and maintained in accordance with the authorized purposes of the project;

(C) shall be subject only to the provisions of Part I of the Federal Power Act, except the word "constructed" in section 3(10); the four provisos of section 4(e); section 6 to the extent it requires the licensee's acceptance of those terms and conditions of the Act that this subsection waives; section 10(e) as concerns annual charges for the use and occupancy of federal lands and facilities; section 10(f); section 10(j); section 18; section 19; section 20; and section 22 of the Federal Power Act, 16 U.S.C. 796(10), 797(e), 799, 803(e), 803(f), 803(j), 811, 812, 813, and 815; and shall not be subject to the standard "L-Form" license conditions, published at 54 FPC 1792-1928 (1975), the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), as amended, section 2402 of the Energy Policy Act of 1992 (16 U.S.C. 797c), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.), the Federal Water Pollution Control Act (commonly known as the "Clean Water Act") (33 U.S.C. 1251 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), or any other Act otherwise applicable to the licensing of the project.

(3) The license issued under paragraph (1) is deemed to meet the licensing standards of the Federal Power Act, including section 10(a) and the last sentence of section 4(e), 16 U.S.C. 797(e).

(4) Any power site reservation established by the President, the Secretary of the Interior, or pursuant to section 24 of the Federal Power Act (16 U.S.C. 818) or any other law, which exists on any lands, whether federally or privately owned, that are included within the boundaries of the project shall be va-

cated by operation of law upon issuance of the license for the project.

(5) All requirements of Part I of the Federal Power Act and of any other Act applicable to the licensing of a hydroelectric project shall apply to the project upon expiration of the license issued under this section.

(6) For purposes of this section, "Commission" means the Federal Energy Regulatory Commission.

(7) The operation of the Project shall be subject to all applicable state and federal laws subsequent to the issuance of the license pursuant to paragraph (1).

(f) INAPPLICABILITY OF NEPA.—Neither the conveyance of the Project nor the issuance of easements pursuant to this section constitutes a major Federal action within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including any regulations issued under such Act.

(g) INAPPLICABILITY OF PRIOR AGREEMENTS AND OF FEDERAL RECLAMATION LAWS.—On conveyance of the Project to the Districts—

(1) the Repayment Contract dated May 27, 1957, as amended April 12, 1962, between the Collbran Conservancy District and the United States, and the Contract for use of Project facilities for Diversion of Water dated January 11, 1962, as amended November 10, 1977, between the Ute Water Conservancy District and the United States, shall be terminated and of no further force or effect; and

(2) the Project shall no longer be subject to or governed by the Federal reclamation laws.

(h) DISTRICTS' LIABILITY.—The Districts shall be liable, to the extent allowed under State law, for all acts or omissions relating to the operation and use of the Project by the Districts that occur subsequent to the conveyance under section (c), including damages to Federal lands or facilities which result from the failure of Project facilities.

(i) EFFECT ON STATE LAW.—Nothing in this section shall be construed to impair the effectiveness of any State or local law (including regulations) relating to land use.

(j) TREATMENT OF SALES FOR PURPOSES OF CERTAIN LAWS.—The sales of assets under this subchapter shall not be considered a disposal of Federal surplus property under the following provisions of law:

(1) Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484).

(2) Section 13 of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

Subchapter D—Sly Park

SEC. 5356. SLY PARK.

(a) SHORT TITLE.—This subchapter may be cited as the "Sly Park Unit Conveyance Act".

(b) DEFINITIONS.—For purposes of this subchapter:

(1) The term "El Dorado Irrigation District" or "District" means a political subdivision of the State of California duly organized, existing, and acting pursuant to the laws thereof with

its principal place of business in the city of Placerville, El Dorado County, California.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Sly Park Unit" means the Sly Park Dam and Reservoir, Camp Creek Diversion Dam and Tunnel and conduits and canals as authorized under the Act entitled "An Act to authorize the American River Basin development, California, for irrigation and reclamation, and for other purposes", approved October 14, 1949 (63 Stat. 852 chapter 690), together with all other facilities owned by the United States including those used to convey and store water delivered from Sly Park, as well as all recreation facilities associated thereto.

(c) SALE OF THE SLY PARK UNIT.—

(1) IN GENERAL.—The Secretary shall, on or before December 31, 1997, and upon receipt of the payment for the original construction debt described in paragraph (2), sell and convey to the El Dorado Irrigation District all right, title, and interest of the United States in and to the Sly Park Unit. At the time the Sly Park Unit is conveyed, the Secretary shall also transfer and assign to the District the water rights relating to the Sly Park Unit held in trust by the Secretary for diversion and storage under California State permits numbered 2631, 5645A, 10473, and 10474.

(2) SALE PRICE.—The sale price for the Sly Park Unit shall be $3,993,982, which is the outstanding balance for the original construction of the Sly Park Unit payable to the United States. Payment shall be deposited as miscellaneous receipts in the Treasury and credited to the Central Valley Project Restoration Fund. Payment of such price shall extinguish all payment obligations under contract numbered 14-06-200-949 between the District and the Secretary.

(d) NO ADDITIONAL ENVIRONMENTAL IMPACT.—The Congress specifically finds that (A) the sale, conveyance and assignment of the Sly Park Unit and water rights under this section involves the transfer of the ownership and operation of an existing ongoing water project, (B) the Sly Park Unit operation, facilities, and water rights have been, and after the sale and transfer will continue to be, committed to maximum reasonable and beneficial use for existing services, and (C) the sale, conveyance and assignment of the Sly Park Unit and water rights does not involve any additional growth or expansion of the project or other environmental impacts. Consequently, the sale, conveyance and assignment of the Sly Park Unit and water rights shall not be subject to environmental review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4332) or endangered species review or consultation pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536).

(e) CERTAIN CONTRACT OBLIGATIONS NOT AFFECTED.—The sale of the Sly Park Unit under this section shall not affect the payment obligations of the District under the contract between the District and the Secretary numbered 14-06-200-7734, as amended by contracts numbered 14-06-200-4282A and 14-06-200-8536A.

(f) TREATMENT OF SALES FOR PURPOSES OF CERTAIN LAWS.—The sales of assets under this subchapter part shall not be consid-

ered a disposal of Federal surplus property under the following provisions of law:

(1) Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484).

(2) Section 13 of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

Subchapter E—Central Utah Project

SEC. 5357. PREPAYMENT OF CERTAIN REPAYMENT CONTRACTS BETWEEN THE UNITED STATES AND THE CENTRAL UTAH WATER CONSERVANCY DISTRICT.

The second sentence of section 210 of the Central Utah Project Completion Act (106 Stat. 4624) is amended to read as follows: "The Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District: Provided That the District shall complete all payments authorized pursuant to this section by the end of fiscal year 2002.".

CHAPTER 4—FEDERAL OIL AND GAS ROYALTIES

SEC. 5361. DEFINITIONS.

Section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended—

(1) by amending paragraph (7) to read as follows:

"(7) 'lessee' means any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned;"; and

(2) by striking "and" at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting a semicolon, and by adding at the end the following:

"(17) 'adjustment' means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on a lease;

"(18) 'administrative proceeding' means any Department of the Interior agency process in which a demand, decision or order issued by the Secretary or a delegated State is subject to appeal or has been appealed;

"(19) 'assessment' means any fee or charge levied or imposed by the Secretary or a delegated State other than—

"(A) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

"(B) any interest; or

"(C) any civil or criminal penalty;

"(20) 'commence' means—

"(A) with respect to a judicial proceeding, the service of a complaint, petition, counterclaim, crossclaim, or other pleading seeking affirmative relief or seeking credit or recoupment; or

"(B) with respect to a demand, the receipt by the Secretary or a delegated State or a lessee of the demand;

"(21) 'credit' means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

"(22) 'delegated State' means a State which, pursuant to an agreement or agreements under section 205, performs authorities, duties, responsibilities, or activities of the Secretary which may be performed by a State under the Constitution of the United States for all lands within the State, including, but not limited to—

"(A) activities under sections 111 and 115;

"(B) collection, audit, lease and post-lease management activities, and applicable enforcement activities;

"(C) inspections (including activities described in section 108;

"(D) approval of pooling, unitization, and communitization agreements; and

"(E) investigations;

"(23) 'demand' means—

"(A) an order to pay issued by the Secretary or the applicable delegated State that has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing; or

"(B) a separate written request by a lessee which asserts an obligation due the lessee that has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing, but does not mean any royalty or production report, or any information contained therein, required by the Secretary or a delegated State;

"(24) 'obligation' means—

"(A) any duty of the Secretary or, if applicable, a delegated State—

"(i) to take oil or gas royalty in kind at or near the lease (unless the lease expressly provides for delivery at a different location); or

"(ii) to pay, refund, offset, or credit monies including but not limited to)—

"(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale; or

"(II) any interest;

"(B) any duty of a lessee—

"(i) to deliver oil or gas royalty in kind at or near the lease (unless the lease expressly provides for delivery at a different location); or

"(ii) to pay, offset or credit monies including but not limited to—

"(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

"(II) any interest;

"(III) any penalty; or

"(IV) any assessment, which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil or gas on Federal lands or the Outer Continental Shelf;

"(25) 'order to pay' means a written order issued by the Secretary or the applicable delegated State which—

"(A) asserts a specific, definite, and quantified obligation claimed to be due, and

"(B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason or reasons such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary or a delegated State;

"(26) 'overpayment' means any payment by a lessee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;

"(27) 'payment' means satisfaction, in whole or in part, of an obligation;

"(28) 'penalty' means a statutorily authorized civil fine levied or imposed for a violation of this Act, any mineral leasing law, or a term or provision of a lease administered by the Secretary;

"(29) 'refund' means the return of an overpayment;

"(30) 'State concerned' means, with respect to a lease, a State which receives a portion of royalties or other payments under the mineral leasing laws from such lease;

"(31) 'underpayment' means any payment or nonpayment by a lessee that is less than the amount legally required to be paid on an obligation; and

"(32) 'United States' means the United States Government and any department, agency, or instrumentality thereof, the several States, the District of Columbia, and the territories of the United States.".

SEC. 5362. MAXIMIZING RECEIPTS THROUGH STATE EFFORTS.

(a) GENERAL AUTHORITY.—Section 205(a) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735(a)) is amended to read as follows:

"(a) In order to provide incentives to States to maximize the amount of oil and gas receipts collected on lease obligations within the six-year period of limitations, and consequently to maximize the Federal share of such receipts to the United States Treasury, upon written request of a State, the State, pursuant to an agreement or agreements and consistent with subsection (c), may perform all or part of the authorities, duties, responsibilities, and activities of the Secretary under this Act which may be delegated to a State under

the Constitution of the United States for all Federal lands within the State. The delegated State shall assume and perform the authorities, duties, responsibilities, or activities delegated under this section. To avoid duplication of effort, any authority, duty, responsibility, or activity delegated to a State under this Act with respect to all Federal lands within the State may not be carried out by the Secretary. Under any such agreement, the Secretary shall share oil or gas royalty management information.".

(b) DETERMINATION.—Section 205(b) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735(b)) is amended by striking "is authorized to" and inserting "shall".

(c) FEDERAL-STATE ROYALTY COLLECTION EFFORTS.—Subsection (c) section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735) is amended by striking "which define" and all that follows and inserting "within 18 months after the date of enactment of section 115, under which States may perform the authorities, duties, responsibilities, and activities under this title which are subject to delegation, based on the recommendations of the States concerned following consultation with affected persons. If the Secretary decides not to follow any recommendations supported by all States concerned, the Secretary shall justify such decision within 30 days after making such decision. In carrying out this section the Secretary shall provide for reasonable flexibility to a State to perform any authority, duty, responsibility or activity delegated hereunder in a more efficient and cost-effective manner and provide the States concerned a direct role in determining such requirements, procedures and policies. To ensure efficient and timely collections of royalties pursuant to this Act, the delegated States shall provide—

"(1) for the effective and efficient performance of any authority, duty, responsibility or activity delegated under this Act;

"(2) for the consistent and uniform performance among the delegated States of any authority, duty, responsibility or activity delegated under this Act;

"(3) for valuation under the terms of the leases and applicable Federal statutes; and

"(4) for uniform reporting form and reporting requirements for all Federal lessees, unless the State and all affected parties otherwise agree.".

(d) PERFORMANCE.—Subsection (d) of section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735) is amended by striking ", pertaining" and all that follows and inserting the following: "for requirements pertaining to records and accounts to be maintained and reporting procedures to be required by delegated States under this section. The records and accounts under such reporting procedures shall be sufficient to allow the Secretary to monitor the performance of any delegated State under this section. The applicable delegated State and the Secretary shall agree to terms and conditions for inclusion into an agreement to perform all or part of the authorities, duties, responsibilities, and activities under this title consistent with subsection (c).".

(e) STATE ACTIONS.—Section 204 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1734) is amended by adding at the end the following:

"(d) With respect to enforcement of an obligation under this Act, a State bringing an action under this section shall enjoy no greater rights than the Secretary enjoys under this Act.".

(f) SAVINGS PROVISION.—Nothing in the amendments made by this section shall impair any agreement, or any extension thereof, existing under section 205 as in effect on the day before the date of enactment of this Act. Following enactment of this Act, any State which is a party to an existing agreement under such section under which the State has been delegated audit or inspection responsibility, may issue orders to pay, subpoenas, or notices to perform restructured accounting and may continue to perform audits or inspections under terms and conditions consistent with the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), as amended by this chapter.

(g) RECEIPTS.—Section 205(f) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735(f)) is amended by adding at the end the following: "Such costs shall be allocable for the purposes of section 35(b) of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920 (commonly known as the "Mineral Leasing Act") (30 U.S.C. 191(b)) to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in land owned by the United States. The Secretary shall compensate any State in the next succeeding fiscal year for the aggregate amount of such costs incurred but not compensated due to such allocation for the current fiscal year. All money received from sales, bonuses, royalties, and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States.".

SEC. 5363. SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by adding after section 114 the following new section:

"SEC. 115. SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS.

"(a) IN GENERAL.—All duties, responsibilities, and activities with respect to a lease shall be performed by the Secretary, delegated States, and lessees in a timely manner.

"(b) LIMITATION PERIOD.—

"(1) A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within six years from the date on which the obligation becomes due and if not so commenced shall be barred. The Secretary, a delegated State, or a lessee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.

"(2) The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code and section 42 of the Mineral Leasing Act (30 U.S.C. 226-2) shall not apply to any obligation to which this Act applies. Section 3716 of title 31, United States Code, may be applied to an obligation the enforcement of which is not barred by this Act, but may not be applied to any obligation the enforcement of which is barred by this Act.

"(c) OBLIGATION BECOMES DUE.—

"(1) IN GENERAL.—For purposes of this Act, an obligation becomes due when the right to enforce the obligation is fixed.

"(2) ROYALTY OBLIGATIONS.—The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this Act on the last day of the calendar month following the month in which oil or gas is produced.

"(d) TOLLING OF LIMITATION PERIOD.—The running of the limitation period under subsection (b) shall not be suspended, tolled, extended, or enlarged for any obligation for any reason by any action, including an action by the Secretary or a delegated State, other than the following:

"(1) TOLLING AGREEMENT.—A written agreement executed during the limitation period between the Secretary or a delegated State and a lessee which tolls the limitation period for the amount of time during which the agreement is in effect.

"(2) SUBPOENA.—

"(A) The issuance of a subpoena to a lessee in accordance with the provisions of subsection (B)(i) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee receives the subpoena and ending on the date on which (i) the lessee has produced such subpoenaed records for the subject obligation, (ii) the Secretary or a delegated State receives written notice that the subpoenaed records for the subject obligation are not in existence or are not in the lessee's possession or control, or (iii) a court has determined in a final decision that such records are not required to be produced, whichever occurs first.

"(B)(i) A subpoena for the purposes of this section which requires a lessee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may be issued only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest elected State official having ultimate authority over the collection of royalties from leases on Federal lands within the state, may issue such subpoena, but may not delegate such authority to any other person.

"(ii) A subpoena described in clause (i) may only be issued against a lessee during the limitation period provided in this section and only after the Secretary or a delegated

State has in writing requested the records from the lessee related to the obligation which is the subject of the subpoena and has determined that—

"(I) the lessee has failed to respond within a reasonable period of time to the Secretary's or the applicable delegated State's written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or

"(II) the lessee has in writing denied the Secretary's or the applicable delegated State's written request to produce such records in the lessee's possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or

"(III) the lessee has unreasonably delayed in producing records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or the applicable delegated State's responsibilities under this Act after the Secretary's or such delegated State's written request.

"(C) In seeking records, the Secretary or the applicable delegated State shall afford the lessee a reasonable period of time after a written request by the Secretary or such delegated State in which to provide such records prior to the issuance of any subpoena.

"(3) MISREPRESENTATION OR CONCEALMENT.—The intentional misrepresentation or concealment of a material fact for the purpose of evading the payment of an obligation in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.

"(4) ORDER TO PERFORM A RESTRUCTURED ACCOUNTING.—(A) The issuance of a notice under subsection (D) that the lessee has not adequately performed a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee receives the notice and ending 120 days after the date on which (i) the Secretary or the applicable delegated State receives written notice the accounting or other requirement has been performed, or (ii) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.

"(B)(i) The Secretary or the applicable delegated State may issue an order to perform a restructured accounting to a lessee when the Secretary or such delegated State determines during an in-depth audit of a lessee that the lessee should recalculate royalty due on an obligation based upon the Secretary's or the delegated State's finding that the lessee has made identified underpayments or overpayments which are demonstrated by the Secretary or the delegated State to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months with the same type of

error which constitutes a pattern of violations and which are likely to result in either significant underpayments or overpayments.

"(ii) The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most senior career professional position having responsibility for the royalty management program, which position is currently designated as the 'Associate Director for Royalty Management', and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the state, may issue such order to perform, which may not be delegated to any other person. An order to perform a restructured accounting shall—

"(I) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;

"(II) specify the reasons and factual bases for such order; and

"(III) be specifically identified as an 'order to perform a restructured accounting'.

"(C) An order to perform a restructured accounting shall not mean or be construed to include any other communication or action by or on behalf of the Secretary or a delegated State.

"(D) If a lessee fails to adequately perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee that the restructured accounting has not been adequately performed. A lessee shall be given a reasonable time within which to perform the restructured accounting. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest elected State official having ultimate authority over the collection of royalties from leases on Federal lands within the state, may issue such notice, which may not be delegated to any other person.

"(e) TERMINATION OF LIMITATIONS PERIOD.—An action or an enforcement of an obligation by the Secretary or delegated State or a lessee shall be barred under this section prior to the running of the six-year period provided in subsection (b) in the event—

"(1) the Secretary or a delegated State has notified the lessee in writing that a time period is closed to further audit; or

"(2) the Secretary or a delegated State and a lessee have so agreed in writing.

"(f) RECORDS REQUIRED FOR DETERMINING COLLECTIONS.—Records required pursuant to section 103 by the Secretary or any delegated State for the purpose of determining obligations due and

compliance with any applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under subsection (b). If a judicial proceeding or demand is timely commenced, the record holder shall maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary, under no circumstance shall a record holder be required to maintain or produce any record relating to an obligation for any time period which is barred by the applicable limitation in this section. Records required for administrative actions and investigations (including, but not limited to, accounting collection and audits) under this Act involving obligations shall not be duplicated pursuant to section 3518(c)(1)(B) of title 44, United States Code.

"(g) TIMELY COLLECTIONS.—In order to most effectively utilize resources available to the Secretary to maximize the collection of oil and gas receipts from lease obligations to the Treasury within the six-year period of limitations, and consequently to maximize the State share of such receipts, the Secretary shall not perform or require accounting, reporting, or audit activities if the Secretary and the State concerned determines that the cost of conducting or requiring the activity exceeds the expected amount to be collected by the activity, based on the most current 12 months of activity. To the maximum extent possible, the Secretary and delegated States shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information, such as separate allowances and payor information, relating to obligations due. If the Secretary and the State concerned determine that collection will result sooner, the Secretary or the applicable delegated State may waive or forego interest in whole or in part.

"(h) APPEALS AND FINAL AGENCY ACTION.—

"(1) 30-MONTH PERIOD.—All orders issued by the Secretary or a delegated State are subject to appeal to the Secretary. No State shall impose any conditions which would hinder a lessee's immediate appeal of an order to the Secretary or the Secretary's designee. The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on the date of enactment of this section, within 30 months from the date such proceeding was commenced or 30 months from the date of such enactment, whichever is later. The 30-month period may be extended by any period of time agreed upon in writing by the Secretary and the lessee.

"(2) EFFECT OF FAILURE TO ISSUE DECISION.—If no such decision has been issued by the Secretary within the 30-month period referred to in paragraph (1)—

"(A) the Secretary shall be deemed to have issued and granted a decision in favor of the lessee or lessees as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than $2,500; and

"(B) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is $2,500 or more, and the lessee shall have a right to a de novo judicial review of such deemed final decision.

"(i) COLLECTIONS OF DISPUTED AMOUNTS DUE.—To expedite collections relating to disputed obligations due within the six-year period beginning on the date the obligation became due, the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation, including waiving or reducing interest and allowing offsetting of obligations among leases.

"(j) ENFORCEMENT OF A CLAIM FOR JUDICIAL REVIEW.—In the event a demand subject to this section is properly and timely issued, the obligation which is the subject of the demand may be enforced beyond the six year limitations period without being barred by this statute of limitations. In the event a demand subject to this section is properly and timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee of the final agency action.

"(k) IMPLEMENTATION OF FINAL DECISION.—In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

"(l) STAY OF PAYMENT OBLIGATION PENDING REVIEW.—Any party ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) shall be entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the party periodically demonstrates to the satisfaction of the Secretary that such party is financially solvent or otherwise able to pay the obligation. In the event the party is not able to so demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any party ordered by the Secretary or a delegated State to pay an assessment shall be entitled to a stay without bond or other surety instrument.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) is amended by inserting after the item relating to section 114 the following new item:

"Sec. 115. Limitation periods and agency actions.".

SEC. 5364. ADJUSTMENT AND REFUNDS.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by inserting after section 111 the following:

"SEC. 111A. ADJUSTMENTS AND REFUNDS.

"(a) ADJUSTMENTS TO ROYALTIES PAID TO THE SECRETARY OR A DELEGATED STATE.—

"(1) If, during the adjustment period, a lessee determines that an adjustment or refund request is necessary to correct an underpayment or overpayment of an obligation, the lessee shall make such adjustment or request a refund within a reasonable period of time and only during the adjustment period. The filing of a royalty report which reflects the underpayment or overpayment of an obligation shall constitute prior written notice to the Secretary or the applicable delegated State of an adjustment.

"(2)(A) For any adjustment, the lessee shall calculate and report the interest due attributable to such adjustment at the same time the lessee adjusts the principal amount of the subject obligation, except as provided by subparagraph (B).

"(B) In the case of a lessee who determines that subparagraph (A) would impose a hardship, the Secretary or such delegated State shall calculate the interest due and notify the lessee within a reasonable time of the amount of interest due, unless such lessee elects to calculate and report interest in accordance with subparagraph (A).

"(3) An adjustment or a request for a refund for an obligation may be made after the adjustment period only upon written notice to and approval by the Secretary or the applicable delegated State, as appropriate, during an audit of the period which includes the production month for which the adjustment is being made. If an overpayment is identified during an audit, then the Secretary or the applicable delegated State, as appropriate, shall allow a credit or refund in the amount of the overpayment.

"(4) For purposes of this section, the adjustment period for any obligation shall be the five-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 115.

"(b) REFUNDS.—

"(1) IN GENERAL.—A request for refund is sufficient if it—

"(A) is made in writing to the Secretary and, for purposes of section 115, is specifically identified as a demand;

"(B) identifies the person entitled to such refund;

"(C) provides the Secretary information that reasonably enables the Secretary to identify the overpayment for which such refund is sought; and

"(D) provides the reasons why the payment was an overpayment.

"(2) NOTICE.—The Secretary shall promptly notify each State concerned of a request for refund.

"(3) PAYMENT BY SECRETARY OF THE TREASURY.—The Secretary shall certify the amount of the refund to be paid under

paragraph (1) to the Secretary of the Treasury who shall make such refund. Such refund shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such refund attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any recipient prescribed by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

"(4) PAYMENT PERIOD.—A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this Act.

"(5) PROHIBITION AGAINST REDUCTION OF REFUNDS OR CREDITS.—In no event shall the Secretary or any delegated State directly or indirectly claim or offset any amount or amounts against, or reduce any refund or credit (or interest accrued thereon) by the amount of any obligation the enforcement of which is barred by section 115.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) is amended by inserting after the item relating to section 111 the following new item:

"Sec. 111A. Adjustments and refunds.".

SEC. 5365. ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES.

(a) LESSEE INTEREST.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended by adding after subsection (g) the following:

"(h) Interest shall be allowed and paid or credited on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of the Internal Revenue Code of 1986, but determined without regard to the matter following subparagraph (B) of section 6621(a)(1). Interest which has accrued on any overpayment may be applied to reduce an underpayment. This subsection applies to overpayments made later than six months after the date of enactment of this subsection or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act, and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be de-

ducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.''.

(b) LIMITATION ON INTEREST.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982, as amended by subsection (a), is further amended by adding at the end the following:

''(i) Upon a determination by the Secretary that an excessive overpayment (based upon all obligations of a lessee for a given reporting month) was made for the sole purpose of receiving interest, interest shall not be paid on the excessive amount of such overpayment. For purposes of this Act, an 'excessive overpayment' shall be the amount that any overpayment a lessee pays for a given reporting month (excluding payments for demands for obligations determined to be due as a result of judicial or administrative proceedings or agreed to be paid pursuant to settlement agreements) for the aggregate of all of its Federal leases exceeds 10 percent of the total royalties paid that month for those leases.''.

(c) ESTIMATED PAYMENT.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) and (b), is further amended by adding at the end the following:

''(j) A lessee may make a payment for the approximate amount of royalties (hereinafter in this subsection 'estimated payment') that would otherwise be due for such lease to avoid underpayment or nonpayment interest charges. When an estimated payment is made, actual royalties are due and payable at the end of the month following the month in which the estimated payment is made. If the lessee makes a payment for such actual royalties, the lessee may apply the estimated payment to future royalties. Any estimated payment may be adjusted, recouped, or reinstated at any time by the lessee.''.

(d) VOLUME ALLOCATION OF OIL AND GAS PRODUCTION.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) through (c), is amended by adding at the end the following:

''(k)(1) Except as otherwise provided by this subsection—

''(A) a lessee of a lease in a unit or communitization agreement which contains only Federal leases with the same royalty rate and funds distribution shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee;

''(B) a lessee of a lease in any other unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the volume of oil and gas produced from such agreement and allocated to the lease in accordance with the terms of the agreement; and

''(C) a lessee of a lease that is not contained in a unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee.

''(2) This subsection applies only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee's liability for royalties on oil or gas production based on the

share of production allocated to the lease in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement.

"(3) For any unit or communitization agreement, if all lessees contractually agree to an alternative method of royalty reporting and payment, the lessees may submit such alternative method to the Secretary or the delegated State for approval and make payments in accordance with such approved alternative method so long as such alternative method does not reduce the amount of the royalty obligation.

"(4) The Secretary or the delegated State shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar year or portion thereof royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the amount of oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following calendar year or portion thereof. Any additional royalties due or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term 'marginal property' means a lease that produces on average the combined equivalent of less than 15 barrels of oil per day or 90 thousand cubic feet of gas per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such lease by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.

"(5) Not later than two years after the date of the enactment of this subsection, the Secretary shall issue any appropriate demand for all outstanding royalty payment disputes regarding who is required to report and pay royalties on production from units and communitization agreements outstanding on the date of the enactment of this subsection, and collect royalty amounts owed on such production.".

"(e) PRODUCTION ALLOCATION.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) through (d), is amended by adding at the end the following:

"(l) The Secretary or the delegated State shall issue all determinations of allocations of production for units and communitization agreements within 120 days of a request for determination. If the Secretary or the delegated State fails to issue a determination within such 120-day period, the Secretary shall waive interest due on obligations subject to the determination until the end of the month following the month in which the determination is made.".

(f) NEW ASSESSMENT TO ENCOURAGE PROPER ROYALTY PAYMENTS.—

(1) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by this section, is further amended by adding at the end the following:

"SEC. 116. ASSESSMENTS.

"Beginning eighteen months after the date of enactment of this section, to encourage proper royalty payment the Secretary or the delegated State shall impose assessments on lessees who chronically submit erroneous reports under this Act. Assessments under this Act may only be issued as provided for in this section.".

(2) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 115 the following new item:

"Sec. 116. Assessments.".

(g) LIABILITY FOR ROYALTY PAYMENTS.—Section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1712(a)) is amended to read as follows:

"(a) In order to increase receipts and achieve effective collections of royalty and other payments, a lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary or the applicable delegated State. A lessee may designate a person to make all or part of the payments due under a lease on the lessee's behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee. The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning the legal record title in a lease is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.".

(h) CLERICAL AMENDMENT.—The heading of section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended to read as follows:

"ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES".

SEC. 5366. ALTERNATIVES FOR MARGINAL PROPERTIES.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), as amended by section 5365 of this chapter, is further amended by adding at the end the following:

"SEC. 117. ALTERNATIVES FOR MARGINAL PROPERTIES.

"(a) DETERMINATION OF BEST INTERESTS OF STATE CONCERNED AND THE UNITED STATES.—The Secretary and the State concerned, acting in the best interests of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof, shall be subject to a prepayment under subsection (b) or regulatory relief under subsection (c). If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production, provided that if royalty payments from a lease or leases, or well or wells is not

shared with any State, such determination shall be made solely by the Secretary.

"(b) PREPAYMENT OF ROYALTY.—

"(1) I GENERAL.—Notwithstanding the provisions of any lease to the contrary, for any lease or leases or well or wells identified by the Secretary and the State concerned pursuant to subsection (a), the Secretary is authorized to accept a prepayment for royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term if the affected lessee so agrees. Any prepayment agreed to by the Secretary, State concerned and lessee which is less than an average $500 per month in total royalties shall be effectuated under this section not earlier than two years after the date of enactment of this section and, any prepayment which is greater than an average $500 per month in total royalties shall be effectuated under this section not earlier than three years after the date of enactment of this section. The Secretary and the State concerned may condition their acceptance of the prepayment authorized under this section on the lessee's agreeing to such terms and conditions as the Secretary and the State concerned deem appropriate and consistent with the purposes of this Act. Such terms may—

"(A) provide for prepayment that does not result in a loss of revenue to the United States in present value terms;

"(B) include provisions for receiving additional prepayments or royalties for developments in the lease or leases or well or wells that deviate significantly from the assumptions and facts on which the valuation is determined; and

"(C) require the lessee to provide such periodic production reports as may be necessary to allow the Secretary and the State concerned to monitor production for the purposes of subparagraph (B).

"(2) STATE SHARE.—A prepayment under this section shall be shared by the Secretary with any State or other recipient to the same extent as any royalty payment for such lease.

"(3) SATISFACTION OF OBLIGATION.—Except as may be provided in the terms and conditions established by the Secretary under subsection (b), a lessee who makes a prepayment under this section shall have satisfied in full its obligation to pay royalty on the production stream sold from the lease or leases or well or wells.

"(c) ALTERNATIVE ACCOUNTING AND AUDITING REQUIREMENTS.—

"(1) IN GENERAL.—Within one year after the date of the enactment of this section, the Secretary or the delegated State shall provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop properties subject to subsection (a); provided, that such relief will only be available to lessees in a State that concurs, which concurrence is not required if royalty from the lease or leases or well or wells is not shared with any State. Prior to granting such relief, the Secretary and, if appropriate, the State concerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and, if appropriate, the State concerned.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 115 the following new item:

"Sec. 117. Alternatives for marginal properties.".

SEC. 5367. REPEALS.

(a) FOGRMA.—As applicable to Federal lands, sections 202 and 307 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732 and 1755), are repealed. Such repeal shall not affect cooperative agreements involving Indian tribes or Indian lands. Section 1 of such Act (relating to the table of contents) is amended by striking out the items relating to sections 202 and 307.

(b) OCSLA.—Effective on the date of the enactment of this Act, section 10 of the Outer Continental Shelf Lands Act (43 U.S.C. 1339) is repealed.

SEC. 5368. INDIAN LANDS.

The amendments and repeals made by this chapter shall not apply with respect to Indian lands, and the provisions of the Federal Oil and Gas Royalty Management Act of 1982 as in effect on the day before the date of enactment of this Act shall continue to apply after such date with respect to Indian lands.

SEC. 5369. PRIVATE LANDS.

This chapter shall not apply to any privately owned minerals.

SEC. 5369A. EFFECTIVE DATE.

Except as provided by section 115(f), section 111(h), section 111(k)(5), and section 117 of the Federal Oil and Gas Royalty Management Act of 1982 (as added by this chapter), this chapter, and the amendments made by this chapter, shall apply with respect to the production of oil and gas after the first day of the month following the date of the enactment of this Act.

CHAPTER 5—MINING

SEC. 5371. SHORT TITLE.

This chapter may be cited as "The Mining Law Revenue Act of 1995".

SEC. 5372. DEFINITIONS.

When used in this chapter—

(1) "Assessment year" means the annual period commencing at 12 o'clock noon on the 1st day of September and ending at 12 o'clock noon on the 1st day of September of the following year.

(2) "Federal lands" means lands and interests in lands owned by the United States that are open to mineral location, or that were open to mineral location when a mining claim or site was located and which have not been patented under the general mining laws.

(3) "General mining laws" means those Acts which generally comprise chapters 2, 11, 12, 12A, 15, and 16, and sections 161 and 162, of Title 30 of the United States Code, all Acts heretofore enacted which are amendatory of or supplementary to any of the foregoing Acts, and the judicial and administrative decisions interpreting such Acts.

(4) "Locatable minerals" means those minerals owned by the United States and subject to location and disposition under the general mining laws on or after the effective date of this chapter, but not including any mineral held in trust by the United States for any Indian or Indian tribe, as defined in section 2 of the Indian Mineral Development Act of 1982 (25 U.S.C. 2101), or any mineral owned by any Indian or Indian tribe, as defined in that section, that is subject to a restriction against alienation imposed by the United States, or any mineral owned by any incorporated Native group, village corporation, or regional corporation and acquired by the group or corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(5) "Mineral activities" means any activity related to, or incidental to, exploration for or development, mining, production, beneficiation, or processing of any locatable mineral or mineral that would be locatable if it were subject to disposition under the general mining laws, or reclamation of the impacts of such activities.

(6) "Mining claim or site", except where provided otherwise, means a lode mining claim, placer mining claim, mill site or tunnel site.

(7) "Operator" means any person conducting mineral activities subject to this chapter.

(8) "Person" means an individual, Indian tribe, partnership, association, society, joint venture, joint stock company, firm, company, limited liability company, corporation, cooperative or other organization, and any instrumentality of State or local government, including any publicly owned utility or publicly owned corporation of State or local government.

(9) "Secretary" means the Secretary of the Interior.

SEC. 5373. RENTAL PAYMENT REQUIREMENTS.

(a) RENTAL PAYMENTS.—(1) After the date of enactment of this Act, the owner of each unpatented mining claim or site located pursuant to the general mining laws, whether located before or after the enactment of this Act, shall pay to the Secretary prior to September 1 of each year, until a patent has been issued therefor, an annual rental payment for each unpatented mining claim or site.

(2) LOCATION PAYMENT.—The owner of each unpatented mining claim or site located after the date of enactment of this Act pursuant to the general mining laws shall pay to the Secretary, at the time the copy of the notice or certificate of location is filed with the Bureau of Land Management pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), a $25.00 location payment, in lieu of the annual rental payment of $100 per mining claim or site for the assessment year which includes the date of location of such mining claim or site.

(3) EXEMPTION AND WAIVER.—(A) The owner of any mining claim or site who demonstrates to the Secretary on or before the first day of any assessment year that access to such mining claim or site was denied during the prior assessment year by the action or inaction of any State or Federal governmental officer, agency, or court, or by any Indian tribal authority, shall be exempt from the annual

rental payment requirements of paragraph (1) for the assessment year following the filing of the certification.

(B) The rental payment provided for in subsection 5373(a) shall be waived for the owner of a mining claim or site who certifies in writing to the Secretary, on or before the date the payment is due, that, as of the date such payment is due, such owner and all related persons own not more than ten unpatented mining claims or sites. Any owner of a mining claim or site that is not required to pay a rental payment under this subsection shall continue to be subject to the assessment work requirements of the general mining laws or of any other State or Federal law, subject to any suspension or deferment of annual assessment work provided by law, for the assessment year following the filing of the certification required by this subsection.

(4) AMOUNT OF ANNUAL RENTAL PAYMENT.—For each assessment year the annual rental payment payable for a claim or site referred to in paragraph (1) shall be in the amount specified in Table 1.

Table 1

Assessment Year:	***Amount of Payment Per Site or Claim:***
1996–1998	*$100 per year*
1999 and thereafter	*$200 per year*

(5) EFFECT OF FORFEITURE.—No owner or co-owner of a mining claim or site which has been forfeited because the rental payment has not been paid and no person who is a related person of any such owner or co-owner may relocate a new claim on any part of lands located within the forfeited claim for a period of 12 months after the date of forfeiture.

(b) ANNUAL LABOR.—(1) Beginning in 1999, amounts expended on activities that qualify as annual labor under the general mining laws may be credited on a dollar for dollar basis towards up to 50 percent of the annual rental payment payable under this section for the following assessment year. During the assessment year in 1999, annual labor performed in 1998 may be credited toward the annual rental payment due in 1999.

(2) In order to receive credit under this subsection for annual labor work, the description and value of the work must be included in the statement required in subsection (e) and the statement must be timely filed.

(3) Annual labor performed on an individual mining claim or site within a group of contiguous claims may be credited towards the aggregate amount of rental payments due on all of the contiguous claims within that group.

(c) WORK QUALIFYING AS ANNUAL LABOR.—(1) Only work which directly benefits or develops a mining claim or facilitates the extraction of ore qualifies as annual labor or other activities as determined by the Secretary. Acceptable labor and improvements include, but are not limited to, any of the following:

(A) Drilling or excavating, including ore extraction.

(B) Mining costs directly associated with the production of ore.

(C) Prospecting work which benefits the claim or a contiguous claim.

(D) Development work toward an actual mine, such as shafts, tunnels, crosscuts and drifts, settling ponds and dams.

(E) Activities covered under section 1 of the Act of September 2, 1958 (30 U.S.C. 281), as amended.

(F) Reclamation conducted pursuant to State or Federal surface management laws or regulations.

(2) The following activities do not qualify as annual labor:

(A) Work involved in maintaining the location such as brushing and marking boundaries or replacing corner posts and location notices.

(B) Transportation of workers to or from the location.

(C) Prospecting or exploration work not conducted within the location or a contiguous location.

(d) AMENDMENTS OF PUBLIC LAW 85–876.—The Act of September 2, 1958 (Public Law 85-876; 30 U.S.C. 281), is amended as follows:

(1) Section 1 is amended by inserting "mineral activities, environmental baseline monitoring, and" after "without being limited to" and before "geological, geochemical and geophysical surveys" and by striking "Such" at the beginning of the last sentence and inserting "Airborne".

(2) Section 2(d) is amended by inserting "environmental baseline monitoring or" after "experience to conduct" and before "geological, geochemical or geophysical surveys".

(3) Section 2 is amended by adding the following new subsection at the end thereof:

"(e) The term 'environmental baseline monitoring' means activities for collecting, reviewing and analyzing information concerning soil, vegetation, wildlife, mineral, air, water, cultural, historical, archaeological or other resources related to planning for or complying with Federal and State environmental or permitting requirements applicable to potential or proposed mineral activities on the claim(s).".

(e) RENTAL PAYMENT STATEMENT.—Each payment under subsection (a) of this section shall be accompanied by a statement which reasonably identifies the mining claim or site for which the rental payment is being paid. The statement required under this subsection shall be in lieu of any annual filing requirements for mining claims or sites, under any other Federal law, but shall not supersede any such filing requirement under applicable State law.

(f) ANNUAL LABOR STATEMENT.—When the value of annual labor is credited towards part or all of the rental payment, subject to the 50-percent limit set forth in subsection (b)(1), the following shall apply:

(1) The rental payment statement required in subsection (e) must also state the dates of performance of the labor, describe the character and total value of the improvements made or the labor performed, and the amount of labor used as a credit toward the rental payment for the current year.

(2) The annual labor statements must include a summary of the quantity, value and location of work done. This includes a listing of the physical work done, to include drilling, trench-

ing, sampling and underground excavation, and the location of any environmental, geologic, geochemical, and geophysical surveys. The claim holder shall maintain sufficient records which document the value of the work claimed.

(3) All supporting material filed pursuant to paragraph (2) shall remain confidential in accordance with section 552 of title 5 of the United States Code as long as the location is maintained and for a period of one year after the location is abandoned, after which all data filed shall be considered public information.

(4) To the extent that labor credited against the rental payment payable under this section is determined by a final action not to qualify as labor under the general mining laws, the claimant shall pay the insufficiency by making payment to the Secretary of an amount equal to the amount of the rental payment against which the insufficient labor was credited. If such payment is made within 30 days of the claimant's receipt of a notice of a final decision making such determination, the claim concerned shall not be forfeited or null or void, and the rental payment applicable to such claim shall be deemed timely paid.

(g) CREDIT AGAINST ROYALTY.—The annual claim rental payment payable in advance of the assessment year for any unpatented mining claim or site, or the aggregate rental payments from a group of contiguous claims or sites, shall be credited against the amount of royalty obligation accruing for that year for such claims or sites under section 5375.

(h) FAILURE TO COMPLY.—The failure of the owner to pay any claim rental payment for a mining claim or site by the date such payment is due under this section shall constitute forfeiture of the mining claim or site and such mining claim or site shall be null and void, effective as of the day after the date such payment is due: Provided, That if such rental payment is paid on or before the 30th day after such payment was due under this section, such mining claim or site shall not be forfeited or null or void.

(i) AMENDMENT OF FLPMA FILING REQUIREMENTS.—Section 314(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a)) is hereby repealed.

(j) RELATED PERSONS.—As used in this section, the term "related persons" includes—

(1) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986) of the owner of the mining claim or site; and

(2) a person controlled by, controlling, or under common control with the owner of the mining claim or site.

(k) REPEAL.—Sections 10101 through 10106 of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 406; 30 U.S.C. 28g) are repealed.

SEC. 5374. PATENTS.

(a) IN GENERAL.—Except as provided in subsection (c), any patent issued by the United States under the general mining laws after the date of enactment of this chapter shall be issued only—

(1) upon payment by the owner of the claim of the fair market value for the interest in the land owned by the United States

exclusive of and without regard to the mineral deposits in the land or the use of the land for mineral activities; and

(2) subject to reservation by the United States of the royalty provided in section 5375.

(b) RIGHT OF RE-ENTRY.—

(1) Except as provided in subsection 5374(c), and notwithstanding any other provision of law, the United States shall retain a right of re-entry in lands patented under section 5374.

(2) Such right of re-entry of the United States shall ripen if—

(A) the land is used by the patentee, or any subsequent owners, for any purpose other than conducting mineral activities in good faith;

(B) such use is not discontinued within a time period specified by the Secretary (but not earlier than 90 days after the Secretary provides the owner of the land with written notice pursuant to paragraph (2) to discontinue such use); and

(C) the Secretary elects to assert the right of re-entry in accordance with paragraph (3).

(3) The ripened right of re-entry retained by the United States pursuant to subparagraph (2) shall vest and all right, title and interest in such patented estate shall revert to the United States only if—

(A) the Secretary files a declaration of re-entry within 6 months of the requisite occurrences under paragraph (2) with the Office of the Bureau of Land Management in the state where the land subject to such right of re-entry is situated; and

(B) the Secretary records such declaration in the office of the county recorder of the county in which the lands subject to a reversion are situated within 30 days of filing under subparagraph (A).

(4) One year after the patent holder provides written notice to the Secretary that all mineral activities are completed and applicable reclamation is completed, the right of re-entry held by the United States and created under the subsection (b) shall expire unless within such period the Secretary notifies the patent holder in writing that he is exercising the right of re-entry held by the United States. At such time, ownership of the patented lands shall automatically revert to the United States, notwithstanding subparagraphs (A), (B) and (C) of subsection (b)(2). The Secretary may decline to exercise the right of re-entry and such rights shall continue if—

(a) solid waste or hazardous substances released on or from the patented estate may pose a threat to public safety or the environment; or

(b) acceptance of title would expose the United States to liability for past mineral activities on the patented estate.

(c) PROTECTION OF VALID EXISTING RIGHTS.—Notwithstanding any other provision of law, the requirements of this chapter (except with respect to rental payments in accordance with section 5373)—

(1) shall not apply to the mining claims and sites contained within those mineral patent applications pending at the Department as of September 30, 1995, which shall be processed under the general mining laws in effect immediately prior to the date of enactment of this chapter; and

(2) likewise shall not apply to the mining claims or sites for which there is on the date of enactment of this chapter a vested possessory property right against the Government under the general mining laws in effect immediately prior to the date of enactment of this chapter.

SEC. 5375. ROYALTY.

(a) IN GENERAL.—The production and sale of locatable minerals (including associated minerals) from any unpatented mining claim (other than those from Federal lands to which subsection 5374(c) applies) or any mining claim patented under subsection 5374(a) shall be subject to a royalty of 5.0 percent on the net proceeds from such production mined and sold from such claim.

(b) ROYALTY EXCLUSION.—

(1) The royalty payable under this section shall be waived for any person with annual net proceeds from mineral production subject to subsection (a) of less than $50,000.

(2) The obligation to pay royalties hereunder shall accrue upon the sale of locatable minerals or mineral products produced from a mining claim subject to such royalty, and not upon the stockpiling of the same for future processing.

(3) Where mining operations subject to this section are conducted in two or more places by the same person, the operations shall be considered a single operation the aggregate net proceeds from which shall be subject to the $50,000 limitation set forth in this subsection.

(4) No royalty shall be payable under this section with respect to minerals processed at a facility by the same person or entity which extracted the minerals if an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974 with respect to any portion of such facility.

(c) DEFINITIONS.—For the purposes of this chapter:

(1) The term "net proceeds" shall mean gross yield, less the sum of the following deductions for costs incurred prior to sale or value determination, and none other:

(A) The actual cost of extracting the locatable mineral.

(B) The actual cost of transporting the locatable mineral from the claim to the place or places of reduction, beneficiation, refining, and sale.

(C) The actual cost of reduction, beneficiation, refining, and sale of the locatable mineral.

(D) The actual cost of marketing and delivering the locatable mineral and the conversion of the locatable mineral into money.

(E) The actual cost of maintenance and repairs of—

(i) all machinery, equipment, apparatus, and facilities used in the mine;

(ii) all crushing, milling, leaching, refining, smelting, and reduction works, plants, and facilities; and

(iii) all facilities and equipment for transportation.

(F) The actual cost for support personnel and support services at the mine site, including without limitation, accounting, assaying, drafting and mapping, computer services, surveying, housing, camp, and office expenses, safety, and security.

(G) The actual cost of engineering, sampling, and assaying pertaining to development and production.

(H) The actual cost of permitting, reclamation, environmental compliance and monitoring.

(I) The actual cost of fire and other insurance on the machinery, equipment, apparatus, works, plants, and facilities mentioned in subparagraph (E).

(J) Depreciation of the original capitalized cost of the machinery, equipment, apparatus, works, plants, and facilities listed in subparagraph (E). The annual depreciation charge shall consist of amortization of the original cost in the manner consistent with the Internal Revenue Code of 1986, as amended from time to time. The probable life of the property represented by the original cost must be considered in computing the depreciation charge.

(K) All money expended for premiums for industrial insurance, and the owner paid cost of hospital and medical attention and accident benefits and group insurance for all employees engaged in the production or processing of locatable minerals.

(L) All money paid as contributions or payments under State unemployment compensation law, all money paid as contributions under the Federal Social Security Act, and all money paid to State government in real property taxes and severance or other taxes measured or levied on production, or Federal excise tax payments and payments as fees or charges for use of the Federal lands from which the locatable minerals are produced.

(M) The actual cost of the developmental work in or about the mine or upon a group of mines when operated as a unit.

(2) The term "gross yield" shall having the following meaning:

(A) In the case of sales of gold and silver ore, concentrates or bullion, or the sales of other locatable minerals in the form of ore or concentrates, the term "gross yield" means the actual proceeds of sale of such ore, concentrates or bullion.

(B) In the case of sales of beneficiated products from locatable minerals other than those subject to subparagraph (A) (including cathode, anode or copper rod or wire, or other products fabricated from the locatable minerals), the term "gross yield" means the gross income from mining derived from the first commercially marketable product determined in the same manner as under section 613 of the Internal Revenue Code of 1986.

(C) If ore, concentrates, beneficiated or fabricated products, or locatable minerals are used or consumed and are

not sold in an arms length transaction, the term "gross yield" means the reasonable fair market value of the ore, concentrates, beneficiated or fabricated products at the mine or wellhead determined from the first applicable of the following:

(i) Published or other competitive selling prices of locatable minerals of like kind and grade.

(ii) Any proceeds of sale.

(iii) Value received in exchange for any thing or service.

(iv) The value of any locatable minerals in kind or used or consumed in a manufacturing process or in providing a service.

Without limiting the foregoing, the profits or losses incurred in connection with forward sales, futures or commodity options trading, metal loans, or any other price hedging or speculative activity or arrangement shall not be included in gross yield.

(d) LIMITATIONS AND ALLOCATIONS OF NET PROCEEDS, GROSS YIELD, AND ALLOWABLE DEDUCTIONS.—

(1) The deductions listed in subsection (c)(1) are intended to allow a reasonable allowance for overhead. Such deductions shall not include any expenditures for salaries, or any portion of salaries, of any person not actually engaged in—

(A) the working of the mine;

(B) the operating of the leach pads, ponds, plants, mills, smelters, or reduction works;

(C) the operating of the facilities or equipment for transportation; or

(D) superintending the management of any of those operations described in subparagraphs (A) through (C).

(2) Ores or solutions of locatable minerals subject to the royalty requirements of this section may be extracted from mines comprised of mining claims and lands other than mining claims and ore or solutions of locatable minerals subject to the royalty requirements of this section may be commingled with ores or solutions from lands other than mining claims. In any such case, for purposes of determining the amount of royalties payable under this section—

(A) the operator shall first sample, weigh or measure, and assay the same in accordance with accepted industry standards; and

(B) gross yield, allowable costs and net proceeds for royalty purposes shall be allocated in proportion to mineral products recovered from the mining claims in accordance with accepted industry standards.

(e) LIABILITY FOR ROYALTY PAYMENTS.—The owner or co-owners of a mining claim subject to a royalty under this section shall be liable for such royalty to the extent of the interest in such claim owned. As used in this subsection, the terms "owner" and "co-owner" mean the person or persons owning the right to mine locatable minerals from such claim and receiving the net proceeds of such sale. No person who makes any royalty payment attributable to the interest of the owner or co-owners liable therefor shall become liable to

the United States for such royalty as a result of making such payment on behalf of such owner or co-owners.

(f) TIME AND MANNER OF PAYMENT.—

(1) Royalty payments for production from any mining claim subject to the royalty payable under this section shall be due to the United States at the end of the month following the end of the calendar quarter in which the net proceeds from the sale of such production are received by the owner or co-owners. Royalty payments may be made based upon good faith estimates of the gross yield, net proceeds and the quantity of ore, concentrates, or other beneficiated or fabricated products of locatable minerals, subject to adjustment when the actual annual gross yield, net proceeds and quantity are determined by the owner of the mining claim or site or co-owners.

(2) Each royalty payment or adjustment shall be accompanied by a statement containing each of the following:

(A) The name and Bureau of Land Management serial number of the mining claim or claims from which ores, concentrates, solutions or beneficiated products of locatable minerals subject to the royalty required in this section were produced and sold for the period covered by such payment or adjustment.

(B) The estimated (or actual, if determined) quantity of such ore, concentrates, solutions or beneficiated or fabricated products produced and sold from such mining claim or claims for such period.

(C) The estimated (or actual, if determined) gross yield from the production and sale of such ore, concentrates, solutions or beneficiated products for such period.

(D) The estimated (or actual, if determined) net proceeds from the production and sale of such ores, concentrates, solutions or beneficiated products for such period, including an itemization of the applicable deductions described in subsection (c)(1).

(E) The estimated (or actual, if determined) royalty due to the United States, or adjustment due to the United States or such owner or co-owners, for such period.

(3) In lieu of receiving a refund under subsection (h), the owner or co-owners may elect to apply any adjustment due to such owner or co-owners as an offset against royalties due from such owner or co-owners to the United States under this Act, regardless of whether such royalties are due for production and sale from the same mining claim or claims.

(g) RECORDKEEPING AND REPORTING REQUIREMENTS.—

(1) An owner, operator, or other person directly involved in the conduct of mineral activities, transportation, purchase, or sale of locatable minerals, concentrates, or products derived therefrom, subject to the royalty under this section, through the point of royalty computation, shall establish and maintain any records, make any reports, and provide any information that the Secretary may reasonably require for the purposes of implementing this section or determining compliance with regulations or orders under this section. Upon the request of the Secretary when conducting an audit or investigation pursuant to

subsection (i), the appropriate records, reports, or information required by this subsection shall be made available for inspection and duplication by the Secretary.

(2) Records required by the Secretary under this section shall be maintained for 3 years after the records are generated unless the Secretary notifies the record holder that he or she has initiated an audit or investigation specifically identifying and involving such records and that such records must be maintained for a longer period. When an audit or investigation is under way, such records shall be maintained until the earlier of the date that the Secretary releases the record holder of the obligation to maintain such records or the date that the limitations period applicable to such audit or investigation under subsection (i) expires.

(h) INTEREST ASSESSMENTS.—

(1) If royalty payments under this section are not received by the Secretary on the date that such payments are due, or if such payments are less than the amount due, the Secretary shall charge interest on such unpaid amount. Interest under this subsection shall be computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate." In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount, and only for the number of days such payment is late. No other late payment or underpayment charge or penalty shall be charged with respect to royalties under this section.

(2) In any case in which royalty payments are made in excess of the amount due, or amounts are held by the Secretary pending the outcome of any appeal in which the Secretary does not prevail, the Secretary shall promptly refund such overpayments or pay such amounts to the person or persons entitled thereto, together with interest thereon for the number of days such overpayment or amounts were held by the Secretary, with the addition of interest charged against the United States computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(i) AUDITS, PAYMENT DEMANDS AND LIMITATIONS.—

(1) The Secretary may conduct, after notice, any audit reasonably necessary and appropriate to verify the payments required under this section.

(2) The Secretary shall send or issue any billing or demand letter for royalty due on locatable minerals produced and sold from any mining claim subject to royalty required by this section not later than 3 years after the date such royalty was due and must specifically identify the production involved, the royalty allegedly due and the basis for the claim. No action, proceeding or claim for royalty due on locatable minerals produced and sold, or relating to such production, may be brought by the United States, including but not limited to any claim for additional royalties or claim of the right to offset the amount of such additional royalties against amounts owed to any person by the United States, unless judicial suit or administrative proceedings are commenced to recover specific amounts claimed to be

due prior to the expiration of 3 years from the date such royalty is alleged to have been due.

(j) TRANSITIONAL RULES.—Any mining claim for which a patent is issued pursuant to section 5374(c) shall not be subject to the obligation to pay the royalty pursuant to this section. Royalty payments for any claim processed under section 5374(c) shall be suspended pending final determination of the right to patent. For any such claim that is determined not to qualify for the issuance of a patent under section 5374(c), royalties shall be payable under this section on production after the date of enactment of this Act, plus interest computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate" on production after such date of enactment and before the date of such determination.

(k) PENALTIES.—Any person who withholds payment or royalties under this section after a final, nonappealable determination of liability may be liable for civil penalties of up to $ 5,000 per day that payment is withheld after becoming due.

(l) DISBURSEMENT OF REVENUES.—The receipts from royalties collected under this section shall be disbursed as follows:

(1) Fifty percent of such receipts shall be paid into the Treasury of the United States and deposited as miscellaneous receipts.

(2) Forty percent of such receipts shall be paid into a State Fund or Federal Fund in accordance with section 5376; until termination as provided in section 5379.

(3) Ten percent of such receipts shall be paid by the Secretary of the Treasury to the State in which the mining claim from which production occurred is located.

SEC. 5376. ABANDONED LOCATABLE MINERALS MINE RECLAMATION FUND.

(a) STATE FUND.—Any State within which royalties are collected pursuant to section 5375 from a mining claim and which wishes to become eligible to receive such proceeds allocated by paragraph 5375(l)(2) shall establish and maintain an interest-bearing abandoned locatable mineral mine reclamation fund (hereinafter referred to in this chapter as "State Fund") to accomplish the purposes of this chapter. States with existing abandoned locatable mineral reclamation programs shall qualify to receive proceeds allocated by section 5375(l)(2).

(b) FEDERAL FUND.—There is established on the books of the Treasury of the United States an interest-bearing fund to be known as the Abandoned Locatable Minerals Mine Reclamation Fund (hereinafter referred to in this chapter as "Federal Fund") which shall consist of royalty proceeds allocated by paragraph 5375(l)(2) from mining claims in a State where a State Fund has not been established or maintained under subsection (a).

SEC. 5377. ALLOCATION AND PAYMENTS.

(a) STATE FUND.—Royalties collected pursuant to section 5375 and allocated by section 5375(l)(2) shall be paid by the Secretary of the Treasury to the State Fund established pursuant to subsection 5376(a) for the State where the mining claim from which the production occurred is located. Payments to States under this subsection with respect to any royalties received by the United States,

shall be made not later than the last business day of the month in which such royalties are warranted by the United States Treasury to the Secretary of the Interior as having been received, except for any portion of such royalties which is under challenge, which shall be placed in a suspense account pending resolution of such challenge. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such royalties by the Treasury. Royalties placed in a suspense account which are determined to be due the United States shall be payable to a State Fund not later than fifteen days after such challenge is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the challenge is resolved. In determining the amount of payments to State Funds under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.

(b) FEDERAL FUND.—Royalties collected pursuant to section 5375, and allocated by paragraph 5375(l)(2), from mining claims located in a State which has not established or maintained a State Fund, and such royalties from mining claims located in a State for which the Secretary's authority has expired under subsection 5379(a), shall be credited to the Federal Fund and distributed in accordance with subsection (c).

(c) TRANSITION.—Prior to the time a State establishes a State Fund pursuant to subsection 5376(a), any royalties collected from a mining claim within such State shall be deposited into the Federal Fund and allocated to such State. Once a State establishes a State Fund under subsection 5376(a), the State allocation in the Federal Fund with accrued interest shall be paid by the Secretary of the Treasury to the State Fund in accordance with subsection (a). Commencing three years after the date of enactment of this chapter, the Secretary of the Treasury shall distribute royalty proceeds then accrued or which are thereafter credited to the Federal Fund equally among all States which maintain a State Fund established under subsection 5376(a), and for which the Secretary of the Treasury's authority has not expired under subsection 5379(a).

SEC. 5378. ELIGIBLE AREA.

(a) IN GENERAL.—Subject to subsection (b), lands and water eligible for reclamation under this chapter shall be Federal lands that—

(1) have been adversely affected by past mineral activities on lands abandoned and left inadequately reclaimed prior to the date of enactment of this chapter; and

(2) for which the State determines there is no identifiable party with a continuing reclamation responsibility under State or Federal laws.

(b) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—The following areas shall not be eligible for expenditures from a State Fund:

(1) any area subject to a plan of operations submitted or approved prior to, on or after the date of enactment of this chapter which includes remining or reclamation of the area adversely affected by past locatable mineral activities;

(2) any area affected by coal mining eligible for reclamation expenditures pursuant to section 404 of the Surface Mining Control and Reclamation Act (30 U.S.C. 1234);

(3) any area designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912); and

(4) any area that was listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9605) prior to the date of enactment of this chapter, or where the Environmental Protection Agency has initiated or caused to be initiated a response action pursuant to that Act.

SEC. 5379. SUNSET PROVISIONS.

(a) TERMINATION OF AUTHORITY.—The Secretary of the Treasury's authority to allocate funds to a State Fund under section 5377 shall expire on the date that the State submits a report to the Congress which states that there are no areas in the State eligible under subsection 5378(a) which remain to be reclaimed.

(b) TERMINATION OF FUND.—Upon the termination of authority as provided in subsection (a) with respect to all State Funds, the Federal Fund shall also be terminated, and all royalty proceeds thereafter remaining in the Federal Fund shall be distributed to the States as provided for in Section 5375(l)(3).

SEC. 5380. EFFECT ON THE GENERAL MINING LAWS.

The provisions of this chapter shall supersede the general mining laws only to the extent such laws conflict with the requirements of this chapter. Where no such conflict exists, the general mining laws, including all judicial and administrative decisions interpreting them, shall remain in full force and effect.

SEC. 5381. SEVERABILITY.

If any provision of this chapter or the applicability thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 5382. MINERAL MATERIALS.

(a) DETERMINATIONS.—Section 3 of the Act of July 23, 1955 (30 U.S.C. 611), is amended as follows:

(1) Insert "(a)" before the first sentence.

(2) Add the following new subsection at the end thereof:

(b)(1) Subject to valid existing rights, after the date of enactment of this subsection, notwithstanding the reference to common varieties in subsection (a) and to the exception to such term relating to a deposit of materials with some property giving it distinct and special value, all deposits of mineral materials referred to in such subsection, including the block pumice referred to in such subsection, shall be subject to disposal only under the terms and conditions of the Materials Act of 1947.

(2) For purposes of paragraph (1), the term "valid existing rights" means that a mining claim located for any such mineral material had some property giving it the distinct and special value referred to in subsection (a), or as the case may be, met the definition of block pumice referred to in such subsection, was properly located and maintained under the general mining laws prior to the date of the enactment of this subsection, and was supported by a discovery of a valuable mineral deposit within the meaning of the

general mining laws as in effect immediately prior to such date of enactment and that such claim continues to be valid under this Act.''.

(b) IDENTIFIED DEPOSITS.—The Act entitled ''An Act to provide for the disposal of materials on the public lands of the United States'', approved July 31, 1947 (30 U.S.C. 602), is amended by adding at the end the following:

''(b) IDENTIFIED DEPOSITS.—

''(1) Lands known to contain valuable deposits of mineral materials subject to this Act and subsequent amendments and not covered by any contract, permit, or lease, for uncommon varieties of mineral materials under this section or by a valid mining claim for an uncommon variety of a mineral material under the general mining laws shall be subject to disposition by lease under this Act by the Secretary through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such reasonably compact areas as he shall fix.

''(2) All leases will be conditioned upon—

''(A) the payment by the lessee of such royalty as may be fixed in the lease, not less than two percent of the quantity or gross value of the output of mineral materials, and

''(B) the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof; 50 cents per acre for the second, third, fourth, and fifth years, respectively; and $1 per acre per annum thereafter during the continuance of the lease, such rental for that year being credited against royalties accruing for that year.

''(3)(A) Any lease issued under this subsection shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each 20-year period succeeding the date of the lease such reasonable adjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary unless otherwise provided by law at the expiration of such periods.

''(B) Leases shall be conditioned upon a minimum annual production or the payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, or casualties not attributable to the lessee.

''(C) The Secretary may permit suspension of operations under any such leases when marketing conditions are such that the leases cannot be operated except at a loss.

''(D) The Secretary upon application by the lessee prior to the expiration of any existing lease in good standing shall amend such lease to provide for the same tenure and to contain the same conditions, including adjustment at the end of each 20-year period succeeding the date of said lease, as provided for in this subsection.

''(c) OTHER LANDS.—

''(1) The Secretary is hereby authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for mineral materials in lands belonging to the

United States which are not subject to subsection (b), and are not covered by a contract, permit, or lease under this Act, except that a prospecting permit shall not exceed a period of 2 years and the area to be included in such a permit shall not exceed 2,560 acres of land in reasonably compact form.

"(2) The Secretary shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this Act appropriate provisions for its cancellation by him.

"(3)(A) Upon showing to the satisfaction of the Secretary that valuable deposits of one of the mineral materials subject to the Materials Act of 1947 have been discovered by the permittee within the area covered by his permit, and that such land is valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit, at a royalty of not less than two percent of the quantity or gross value of the output of the mineral materials at the point of shipment to market, such lease to be taken in compact form by legal subdivisions of the public land surveys, or if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary.".

"(B) "Persons holding valid mining claims for uncommon varieties of mineral materials shall be entitled to receive a lease under this subsection."

(D) MINERAL MATERIALS DISPOSAL CLARIFICATION.—Section 4 July 23, 1955 (30 U.S.C. 612), is amended as follows:

(1) In subsection (b) insert "and mineral material" after "vegetative".

(2) In subsection (c) insert "and mineral material" after "vegetative".

(e) AUTHORIZATION FOR DISPOSAL OF MINERAL MATERIALS BY CONTRACT.—Section 2(a) of the Act entitled "An Act to provide for the disposal of materials on the public lands of the United States", approved July 31, 1947 (30 U.S.C. 602(a)), is amended—

(1) by striking the period at the end of paragraph (3) and inserting "or, if"; and

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

"(4) the material is a mineral material.".

CHAPTER 6—DEPARTMENT OF THE INTERIOR

SEC. 5391. AIRCRAFT SERVICES.

(a) USE OF PRIVATE CONTRACTORS.—By not later than October 1, 1996, the Secretary of the Interior shall contract with private entities for the provision of all aircraft services required by the Department of the Interior, other than those available from existing DOI aircraft whose primary purpose is fire suppression.

(b) SALE OF FEDERAL AIRCRAFT.—By September 30, 1998, the Secretary of the Interior is authorized and directed to sell all aircraft owned by the Department of the Interior and all associated equipment and facilities, other than those whose primary purpose is fire suppression.

(c) EXEMPTIONS.—The disposition of assets under this section is not subject to section 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483 and 484) or section 13 of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

(d) DISPOSITION OF PROCEEDS.—The proceeds from dispositions under this section shall be returned to the Treasury as miscellaneous receipts and all savings from reduced overhead and other costs related to the management of the assets sold shall be returned to the Treasury.

CHAPTER 7—POWER MARKETING ADMINISTRATIONS

Subchapter A—Bonneville Power Administration Refinancing

SEC. 5401. DEFINITIONS.

For the purposes of this subchapter—

(1) "Administrator" means the Administrator of the Bonneville Power Administration;

(2) "capital investment" means a capitalized cost funded by Federal appropriations that—

(A) is for a project, facility, or separable unit or feature of a project or facility;

(B) is a cost for which the Administrator is required by law to establish rates to repay to the United States Treasury through the sale of electric power, transmission, or other services;

(C) excludes a Federal irrigation investment; and

(D) excludes an investment financed by the current revenues of the Administrator or by bonds issued and sold, or authorized to be issued and sold, by the Administrator under section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838k);

(3) "new capital investment" means a capital investment for a project, facility, or separable unit or feature of a project, facility, or separable unit or feature of a project or facility, placed in service after September 30, 1995;

(4) "old capital investment" means a capital investment the capitalized cost of which—

(A) was incurred, but not repaid, before October 1, 1995, and

(B) was for a project, facility, or separable unit or feature of a project or facility, placed in service before October 1, 1995;

(5) "repayment date" means the end of the period within which the Administrator's rates are to assure the repayment of the principal amount of a capital investment; and

(6) "Treasury rate" means—

(A) for an old capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding October 1, 1995, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between October 1, 1995, and the repayment date for the old capital investment; and

(B) for a new capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the new capital investment.

SEC. 5402. NEW PRINCIPAL AMOUNTS.

(a) PRINCIPAL AMOUNT.—Effective October 1, 1995, an old capital investment has a new principal amount that is the sum of—

(1) the present value of the old payment amounts for the old capital investment, calculated using a discount rate equal to the Treasury rate for the old capital investment; and

(2) an amount equal to $100,000,000 multiplied by a fraction the numerator of which is the principal amount of the old payment amounts for the old capital investment and the denominator of which is the sum of the principal amounts of the old payment amounts for all old capital investments.

(b) DETERMINATION.—With the approval of the Secretary of the Treasury, based solely on consistency with this subchapter, the Administrator shall determine the new principal amounts under this section and the assignment of interest rates to the new principal amounts under section 5403.

(c) OLD PAYMENT AMOUNT.—For the purposes of this section, "old payment amounts" means, for an old capital investment, the annual interest and principal that the Administrator would have paid to the United States Treasury from October 1, 1995, if this subchapter had not been enacted, assuming that—

(1) the principal were repaid—

(A) on the repayment date the Administrator assigned before October 1, 1993, to the old capital investment, or

(B) with respect to an old capital investment for which the Administrator has not assigned a repayment date before October 1, 1993, on a repayment date the Administrator shall assign to the old capital investment in accordance with paragraph 10(d)(1) of the version of Department of Energy Order RA 6120.2 in effect on October 1, 1993; and

(2) interest were paid—

(A) at the interest rate the Administrator assigned before October 1, 1993, to the old capital investment, or

(B) with respect to an old capital investment for which the Administrator has not assigned an interest rate before October 1, 1993, at a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the old capital investment.

SEC. 5403. INTEREST RATE FOR NEW PRINCIPAL AMOUNTS.

As of October 1, 1995, the unpaid balance on the new principal amount established for an old capital investment under section 5402 bears interest annually at the Treasury rate for the old capital investment until the earlier of the date that the new principal amount is repaid or the repayment date for the new principal amount.

SEC. 5404. REPAYMENT DATES.

As of October 1, 1995, the repayment date for the new principal amount established for an old capital investment under section 5402 is no earlier than the repayment date for the old capital investment assumed in section 5402(c)(1).

SEC. 5405. PREPAYMENT LIMITATIONS.

During the period October 1, 1995, through September 30, 2000, the total new principal amounts of old capital investments, as established under section 5402, that the Administrator may pay before their respective repayment dates shall not exceed $100,000,000.

SEC. 5406. INTEREST RATES FOR NEW CAPITAL INVESTMENTS DURING CONSTRUCTION.

(a) NEW CAPITAL INVESTMENT.—The principal amount of a new capital investment includes interest in each fiscal year of construction of the related project, facility, or separable unit or feature at a rate equal to the one-year rate for the fiscal year on the sum of—

(1) construction expenditures that were made from the date construction commenced through the end of the fiscal year, and

(2) accrued interest during construction.

(b) PAYMENT.—The Administrator is not required to pay, during construction of the project, facility, or separable unit or feature, the interest calculated, accrued, and capitalized under subsection (a).

(c) ONE-YEAR RATE.—For the purposes of this section, "one-year rate" for a fiscal year means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year, on outstanding interest-bearing obligations of the United States with periods to maturity of approximately one year.

SEC. 5407. INTEREST RATES FOR NEW CAPITAL INVESTMENTS.

The unpaid balance on the principal amount of a new capital investment bears interest at the Treasury rate for the new capital investment from the date the related project, facility, or separable unit or feature is placed in service until the earlier of the date the new capital investment is repaid or the repayment date for the new capital investment.

SEC. 5408. CREDITS TO ADMINISTRATOR'S PAYMENTS TO THE UNITED STATES TREASURY.

The Confederated Tribe of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103–436; 108 Stat. 4577) is amended by striking section 6 and inserting the following:

"SEC. 6. CREDITS TO ADMINISTRATOR'S PAYMENTS TO THE UNITED STATES TREASURY.

"So long as the Administrator makes annual payments to the tribes under the settlement agreement, the Administrator shall

apply against amounts otherwise payable by the Administrator to the United States Treasury a credit that reduces the Administrator's payment in the amount and for each fiscal year as follows: $15,250,000 in fiscal year 1996; $15,860,000 in fiscal year 1997; $16,490,000 in fiscal year 1998; $17,150,000 in fiscal year 1999; $17,840,000 in fiscal year 2000; and $4,100,000 in each succeeding fiscal year.''.

SEC. 5409. CONTRACT PROVISIONS.

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1995, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1995—

(1) the Administrator shall establish rates and charges on the basis that—

(A) the principal amount of an old capital investment shall be no greater than the new principal amount established under section 5402;

(B) the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under section 5403;

(C) any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

(D) any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

(2) apart from charges necessary to repay the new principal amount of an old capital investment as established under section 5402 and to pay the interest on the principal amount under section 5403, no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

(3) amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United States on a claim for a breach of the contract provisions required by this subchapter; and

(4) the contract provisions specified in this subchapter do not—

(A) preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

(B) affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to—

(i) allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

(ii) design rates.

SEC. 5410. SAVINGS PROVISIONS.

(a) REPAYMENT.—This subchapter does not affect the obligation of the Administrator to repay the principal associated with each capital investment, and to pay interest on the principal, only from the "Administrator's net proceeds," as defined in section 13(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 838k(b)).

(b) PAYMENT OF CAPITAL INVESTMENT.—Except as provided in section 5405, this subchapter does not affect the authority of the Administrator to pay all or a portion of the principal amount associated with a capital investment before the repayment date for the principal amount.

Subchapter B—Alaska Power Marketing Administration Sale

SEC. 5411. SHORT TITLE.

This subchapter may be cited as the "Alaska Power Administration Asset Sale and Termination Act".

SEC. 5412. DEFINITIONS.

For Purposes of this subchapter:

(1) The term "Eklutna" means Eklutna Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Eklutna Purchase Agreement.

(2) The term "Eklutna Purchase Agreement" means the August 2, 1989, Eklutna Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Eklutna Purchasers, together with any amendments thereto adopted before the date of enactment of this Act.

(3) The term "Eklutna Purchasers" means the Municipality of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc. and the Matanuska Electric Association, Inc.

(4) The term "Snettisham" means the Snettisham Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Snettisham Purchase Agreement.

(5) The term "Snettisham Purchase Agreement" means the February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Alaska Power Authority and its successors in interest, together with any amendments thereto adopted before the date of enactment of this Act.

(6) The term "Snettisham Purchaser" means the Alaska Industrial Development and Export Authority or a successor State agency or authority.

SEC. 5413. SALE OF EKLUTNA AND SNETTISHAM HYDROELECTRIC PROJECTS.

(a) SALE OF EKLUTNA.—The Secretary of Energy is authorized and directed to sell Eklutna to the Eklutna Purchasers in accordance with the terms of this subchapter and the Eklutna Purchase Agreement.

(b) SALE OF SNETTISHAM.—The Secretary of Energy is authorized and directed to sell Snettisham to the Snettisham Purchaser in accordance with the terms of this subchapter and the Snettisham Purchase Agreement.

(c) COOPERATION OF OTHER AGENCIES.—The heads of other Federal departments, agencies, and instrumentalities of the United States shall assist the Secretary of Energy in implementing the sales and conveyances authorized and directed by this subchapter.

(d) PROCEEDS.—Proceeds from the sales required by this subchapter shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

(e) PREPARATION OF EKLUTNA AND SNETTISHAM FOR SALE.—The Secretary of Energy is authorized and directed to use such funds from the sale of electric power by the Alaska Power Administration as may be necessary to prepare, survey, and acquire Eklutna and Snettisham assets for sale and conveyance. Such preparations and acquisitions shall provide sufficient title to ensure the beneficial use, enjoyment, and occupancy by the purchaser.

(f) CONTRIBUTED FUNDS.—Notwithstanding any other provision of law, the Alaska Power Administration is authorized to receive, administer, and expend such contributed funds as may be provided by the Eklutna Purchasers or customers or the Snettisham Purchaser or customers for the purposes of upgrading, improving, maintaining, or administering Eklutna or Snettisham. Upon the termination of the Alaska Power Administration under section 5414(f), the Secretary of Energy shall administer and expend any remaining balances of such contributed funds for the purposes intended by the contributors.

SEC. 5414. EXEMPTION AND OTHER PROVISIONS.

(a) FEDERAL POWER ACT.—

(1) After the sales authorized by this subchapter occur, Eklutna and Snettisham, including future modifications, shall continue to be exempt from the requirements of part I of the Federal Power Act (16 U.S.C. 791a et seq.), except as provided in subsection (b).

(2) The exemption provided by paragraph (1) shall not affect the Memorandum of Agreement entered into among the State of Alaska, the Eklutna Purchasers, the Alaska Energy Authority, and Federal fish and wildlife agencies regarding the protection, mitigation of, damages to, and enhancement of fish and wildlife, dated August 7, 1991, which remains in full force and effect.

(3) Nothing in this subchapter or the Federal Power Act (16 U.S.C. 791 et seq.) preempts the State of Alaska from carrying out the responsibilities and authorities of the Memorandum of Agreement.

(b) SUBSEQUENT TRANSFERS.—Except for subsequent assignment of interest in Eklutna by the Eklutna Purchasers to the Alaska

Electric Generation and Transmission Cooperative Inc. pursuant to section 19 of the Eklutna Purchase Agreement, upon any subsequent sale or transfer of any portion of Eklutna or Snettisham from the Eklutna Purchasers or the Snettisham Purchaser to any other person, the exemption set forth in paragraph (1) of subsection (a) of this section shall cease to apply to such portion.

(c) REVIEW.—

(1) The United States District Court for the District of Alaska shall have jurisdiction to review decisions made under the Memorandum of Agreement and to enforce the provisions of the Memorandum of Agreement, including the remedy of specific performance.

(2) An action seeking review of a Fish and Wildlife Program ("Program") of the Governor of Alaska under the Memorandum of Agreement or challenging actions of any of the parties to the Memorandum of Agreement prior to the adoption of the Program shall be brought not later than 90 days after the date on which the Program is adopted by the Governor of Alaska, or be barred.

(3) An action seeking review of implementation of the Program shall be brought not later than 90 days after the challenged act implementing the Program, or be barred.

(d) EKLUTNA LANDS.—With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

(1) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers—

(A) at no cost to the Eklutna Purchasers;

(B) to remain effective for a period equal to the life of Eklutna as extended by improvements, repairs, renewals, or replacements; and

(C) sufficient for the operation of, maintenance of, repair to, and replacement of, and access to, Eklutna facilities located on military lands and lands managed by the Bureau of Land Management, including lands selected by the State of Alaska.

(2) Fee title to lands at Anchorage Substation shall be transferred to Eklutna Purchasers at no additional cost if the Secretary of the Interior determines that pending claims to, and selections of, those lands are invalid or relinquished.

(3) With respect to the Eklutna lands identified in paragraph 1 of Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey to the State, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly known as the Alaska Statehood Act, Public Law 85–508; 72 Stat. 339), and the North Anchorage Land Agreement dated January 31, 1983. This conveyance shall be subject to the rights-of-way provided to the Eklutna Purchasers under paragraph (1).

(e) SNETTISHAM LANDS.—With respect to the Snettisham lands identified in paragraph 1 of Exhibit A of the Snettisham Purchase Agreement and Public Land Order No. 5108, the State of Alaska may select, and the Secretary of the Interior shall convey to the

State of Alaska, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly known as the Alaska Statehood Act, Public Law 85–508; 72 Stat. 339).

(f) TERMINATION OF ALASKA POWER ADMINISTRATION.—Not later than one year after both of the sales authorized in section 5413 have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary of Energy shall—

(1) complete the business of, and close out, the Alaska Power Administration;

(2) submit to Congress a report documenting the sales; and

(3) return unobligated balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

(g) REPEALS.—

(1) The Act of July 31, 1950 (64 Stat. 382) is repealed effective on the date that Eklutna is conveyed to the Eklutna Purchasers.

(2) Section 204 of the Flood Control Act of 1962 (76 Stat. 1193) is repealed effective on the date that Snettisham is conveyed to the Snettisham Purchaser.

(3) The Act of August 9, 1955, concerning water resources investigation in Alaska (69 Stat. 618), is repealed.

(h) DOE ORGANIZATION ACT.—As of the later of the two dates determined in paragraphs (1) and (2) of subsection (g), section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended—

(1) in paragraph (1)—

(A) by striking subparagraph (C); and

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

(2) in paragraph (2) by striking out "and the Alaska Power Administration" and by inserting "and" after "Southwestern Power Administration,".

(i) DISPOSAL.—The sales of Eklutna and Snettisham under this subchapter are not considered disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) or the Act of October 3, 1944, popularly known as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622).

SEC. 5415. OTHER FEDERAL HYDROELECTRIC PROJECTS.

The provisions of this subchapter regarding the sale of the Alaska Power Administration's hydroelectric projects under section 5413 and the exemption of these projects from part I of the Federal Power Act under section 5414 do not apply to other Federal hydroelectric projects.

CHAPTER 8—OUTER CONTINENTAL SHELF DEEP WATER ROYALTY RELIEF

SEC. 5421. SHORT TITLE.

This chapter may be referred to as the "Outer Continental Shelf Deep Water Royalty Relief Act".

SEC. 5422. AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT.

Section 8(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(3)), is amended—

(1) by designating the provisions of paragraph (3) as subparagraph (A) of such paragraph (3); and

(2) by inserting after subparagraph (A), as so designated, the following:

"(B) In the Western and Central Planning Areas of the Gulf of Mexico and the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, the Secretary may, in order to—

"(i) promote development or increased production on producing or non-producing leases; or

"(ii) encourage production of marginal resources on producing or non-producing leases;

through primary, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease(s). With the lessee's consent, the Secretary may make other modifications to the royalty or net profit share terms of the lease in order to achieve these purposes.

"(C)(i) Notwithstanding the provisions of this Act other than this subparagraph, with respect to any lease or unit in existence on the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act meeting the requirements of this subparagraph, no royalty payments shall be due on new production, as defined in clause (iv) of this subparagraph, from any lease or unit located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, until such volume of production as determined pursuant to clause (ii) has been produced by the lessee.

"(ii) Upon submission of a complete application by the lessee, the Secretary shall determine within 180 days of such application whether new production from such lease or unit would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph. In making such determination, the Secretary shall consider the increased technological and financial risk of deep water development and all costs associated with exploring, developing, and producing from the lease. The lessee shall provide information required for a complete application to the Secretary prior to such determination. The Secretary shall clearly define the information required for a complete application under this section. Such application may be made on the basis of an individual lease or unit. If the Secretary determines that such new production would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph, the provisions of clause (i) shall

not apply to such production. If the Secretary determines that such new production would not be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i), the Secretary must determine the volume of production from the lease or unit on which no royalties would be due in order to make such new production economically viable; except that for new production as defined in clause (iv)(I), in no case will that volume be less than 17.5 million barrels of oil equivalent in water depths of 200 to 400 meters, 52.5 million barrels of oil equivalent in 400 to 800 meters of water, and 87.5 million barrels of oil equivalent in water depths greater than 800 meters. Redetermination of the applicability of clause (i) shall be undertaken by the Secretary when requested by the lessee prior to the commencement of the new production and upon significant change in the factors upon which the original determination was made. The Secretary shall make such redetermination within 120 days of submission of a complete application. The Secretary may extend the time period for making any determination or redetermination under this clause for 30 days, or longer if agreed to by the applicant, if circumstances so warrant. The lessee shall be notified in writing of any determination or redetermination and the reasons for and assumptions used for such determination. Any determination or redetermination under this clause shall be a final agency action. The Secretary's determination or redetermination shall be judicially reviewable under section 10(a) of the Administrative Procedure Act (5 U.S.C. 702), only for actions filed within 30 days of the Secretary's determination or redetermination.

"(iii) In the event that the Secretary fails to make the determination or redetermination called for in clause (ii) upon application by the lessee within the time period, together with any extension thereof, provided for by clause (ii), no royalty payments shall be due on new production as follows:

"(I) For new production, as defined in clause (iv)(I) of this subparagraph, no royalty shall be due on such production according to the schedule of minimum volumes specified in clause (ii) of this subparagraph.

"(II) For new production, as defined in clause (iv)(II) of this subparagraph, no royalty shall be due on such production for one year following the start of such production.

"(iv) For purposes of this subparagraph, the term 'new production' is—

"(I) any production from a lease from which no royalties are due on production, other than test production, prior to the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or

"(II) any production resulting from lease development activities pursuant to a Development Operations Coordination Document, or supplement thereto that would expand production significantly beyond the level

anticipated in the Development Operations Coordination Document, approved by the Secretary after the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act.

"(v) During the production of volumes determined pursuant to clauses (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for light sweet crude oil exceeds $28.00 per barrel, any production of oil will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clause (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds $28.00. After the end of the calendar year, when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

"(vi) During the production of volumes determined pursuant to clause (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for natural gas exceeds $3.50 per million British thermal units, any production of natural gas will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clauses (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds $3.50. After the end of the calendar year, when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

"(vii) The prices referred to in clauses (v) and (vi) of this subparagraph shall be changed during any calendar year after 1994 by the percentage, if any, by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.".

SEC. 5423. NEW LEASES.

Section 8(a)(1) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1337 (a)(1)), is amended—

(1) by redesignating subparagraph (H) as subparagraph (I);

(2) by striking "or" at the end of subparagraph (G); and

(3) by inserting after subparagraph (G) the following new subparagraph:

"(H) cash bonus bid with royalty at no less than 12 and 1/2 per centum fixed by the Secretary in amount or value of production saved, removed, or sold, and with suspension of royalties for a period, volume, or value of production determined by the Secretary, which suspensions may vary based on the price of production from the lease; or".

SEC. 5424. LEASE SALES.

For all tracts located in water depths of 200 meters or greater in the Western and Central Planning Area of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, any lease sale within seven years of the date of enactment of this chapter, shall use the bidding system authorized in section 8(a)(1)(H) of the Outer Continental Shelf Lands Act, as amended by this chapter, except that the suspension of royalties shall be set at a volume of not less than the following:

(1) 17.5 million barrels of oil equivalent for leases in water depths of 200 to 400 meters;

(2) 52.5 million barrels of oil equivalent for leases in 400 to 800 meters of water; and

(3) 87.5 million barrels of oil equivalent for leases in water depths greater than 800 meters.

SEC. 5425. REGULATIONS.

The Secretary shall promulgate such rules and regulations as are necessary to implement the provisions of this chapter within 180 days after the enactment of this Act.

SEC. 5426. SAVINGS CLAUSE.

Nothing in this chapter shall be construed to affect any offshore pre-leasing, leasing, or development moratorium, including any moratorium applicable to the Eastern Planning Area of the Gulf of Mexico located off the Gulf Coast of Florida.

CHAPTER 9—EXPORTS OF ALASKA NORTH SLOPE OIL

SEC. 5431. EXPORTS OF ALASKAN NORTH SLOPE OIL.

Section 28 of the Mineral Leasing Act (30 U.S.C. 185) is amended by amending subsection (s) to read as follows:

“EXPORTS OF ALASKAN NORTH SLOPE OIL

“(s)(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

“(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

“(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

“(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices

significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories. If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

''(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).

''(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), or part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271–76) to prohibit exports.

''(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

''(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

''(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.''.

CHAPTER 10—SKI AREA PERMIT RENTAL CHARGES ON NATIONAL FOREST SYSTEM LANDS

SEC. 5441. SKI AREA PERMIT RENTAL CHARGE.

(a) The Secretary of Agriculture shall charge a rental charge for all ski area permits issued pursuant to section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b), the Act of March 4, 1915 (38 Stat. 1101, chapter 144; 16 U.S.C. 497), or the 9th through 20th paragraphs under the heading ''SURVEYING THE PUBLIC LANDS'' under the heading ''UNDER THE DEPARTMENT OF THE

INTERIOR" in the Act of June 4, 1897 (30 Stat. 34, chapter 2), on National Forest System lands. Permit rental charges for permits issued pursuant to the National Forest Ski Area Permit Act of 1986 shall be calculated as set forth in subsection (b). Permit rental charges for existing ski area permits issued pursuant to the Act of March 4, 1915, and the Act of June 4, 1897, shall be calculated in accordance with those existing permits: Provided, That a permittee may, at the permittee's option, use the calculation method set forth in subsection (b).

(b)(1) The ski area permit rental charge (SAPRC) shall be calculated by adding the permittee's gross revenues from lift ticket/year-round ski area use pass sales plus revenue from ski school operations (LT+SS) and multiplying such total by the slope transport feet percentage (STFP) on National Forest System land. That amount shall be increased by the gross year-round revenue from ancillary facilities (GRAF) physically located on national forest land, including all permittee or subpermittee lodging, food service, rental shops, parking and other ancillary operations, to determine the adjusted gross revenue (AGR) subject to the permit rental charge. The final rental charge shall be calculated by multiplying the AGR by the following percentages for each revenue bracket and adding the total for each revenue bracket:

(A) 1.5 percent of all adjusted gross revenue below $3,000,000;

(B) 2.5 percent for adjusted gross revenue between $3,000,000 and $15,000,000;

(C) 2.75 percent for adjusted gross revenue between $15,000,000 and $50,000,000; and

(D) 4.0 percent for the amount of adjusted gross revenue that exceeds $50,000,000.

(2) In cases where ski areas are only partially located on national forest lands, the slope transport feet percentage on national forest land referred to in subsection (b) shall be calculated as generally described in the Forest Service Manual in effect as of January 1, 1992. Revenues from Nordic ski operations shall be included or excluded from the rental charge calculation according to the percentage of trails physically located on national forest land.

(3) In order to ensure that the rental charge remains fair and equitable to both the United States and ski area permittees, the adjusted gross revenue figures for each revenue bracket in paragraph (1) shall be adjusted annually by the percent increase or decrease in the national Consumer Price Index for the preceding calendar year.

(c) The rental charge set forth in subsection (b) shall be due on June 1 of each year and shall be paid or pre-paid by the permittee on a monthly, quarterly, annual or other schedule as determined appropriate by the Secretary in consultation with the permittee. Unless mutually agreed otherwise by the Secretary of Agriculture and the permittee, the payment or prepayment schedule shall conform to the permittee's schedule in effect prior to the date of enactment of this Act. To reduce costs to the permittee and the Forest Service, the Secretary shall each year provide the permittee with a standardized form and worksheets (including annual rental charge calculation

brackets and rates) to be used for rental charge calculation and submitted with the rental charge payment.

(d) The ski area permit rental charge set forth in this section shall become effective on June 1, 1996 and cover receipts retroactive to June 1, 1995: Provided, however, That if a permittee has paid rental charges for the period June 1, 1995, to June 1, 1996, under the graduated rate rental charge system formula in effect prior to the date of enactment of this Act, such rental charges shall be credited toward the new rental charge due on June 1, 1996. In order to ensure increasing rental charge receipt levels to the United States during transition from the graduated rate rental charge system formula to the formula of this Act, the rental charge paid by any individual permittee shall be—

(1) for the 1995–1996 permit year, shall be either the rental charge paid for the preceding 1994–1995 base year or the rental charge calculated pursuant to this Act, whichever is higher;

(2) for the 1996–1997 permit year, the rental charge paid shall be either the rental charge paid for the 1994–1995 base year or the rental charge calculated pursuant to this Act, whichever is higher; and

(3) for the 1997–1998 permit year, the rental charge for the 1994–1995 base year or the rental charge calculated pursuant to this Act, whichever is higher.

If an individual permittee's adjusted gross revenue for the 1995–1996, 1996–1997, or 1997–1998 permit years falls more than 10 percent below the 1994–1995 base year, the rental charge paid shall be the rental charge calculated pursuant to this Act.

(e) Under no circumstances shall revenue, or subpermittee revenue (other than lift ticket, area use pass, or ski school sales) obtained from operations physically located on non-national forest land be included in the ski area permit rental charge calculation.

(f) To reduce administrative costs on ski area permittees and the Forest Service the terms "revenue" and "sales", as used in this section, shall mean actual income from sales and shall not include sales of operating equipment, refunds, rent paid to the permittee by sublessees, sponsor contributions to special events or any amounts attributable to employee gratuities or employee lift tickets, discounts, or other goods or services (except for bartered goods and complimentary lift tickets) for which the permittee does not receive money.

(g) In cases where an area of national forest land is under a ski area permit but the permittee does not have revenue or sales qualifying for rental charge payment pursuant to subsection (a), the permittee shall pay an annual minimum rental charge of $2 for each national forest acre under permit or a percentage of appraised land value, as determined to be appropriate by the Secretary.

(h) Where the new rental charge provided for in subsection (b)(1) results in an increase in permit rental charge greater than one half of one percent of the permittee's adjusted gross revenue (as determined under subsection (b)(1)), the new rental charge shall be phased in over a 5-year period in a manner providing for increases of approximately equal increments.

CHAPTER 11—PARK ENTRANCE FEES

SEC. 5451. FEES.

(a) ADMISSION FEES.—Section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(a)) is amended—

(1) in the first sentence of the subsection by striking "no more than 21";

(2) in the first sentence of paragraph (1)(A)(i) by striking "$25" and inserting "$50";

(3) in the second sentence of paragraph (1)(B) by striking "$15" and inserting "$25";

(4) in paragraph (2) by striking the fourth, fifth, and sixth sentences and inserting "The fee for a single-visit permit at any designated area shall be collected on a per person basis, not to exceed $6 per person, including for persons entering by private, noncommercial vehicle.";

(5) in paragraph (3)—

(A) in the third sentence by inserting "Great" before "Smoky"; and

(B) by striking the last sentence;

(6) in paragraph (4)—

(A) by striking the second sentence and inserting "Such permit shall be nontransferable, shall be issued for a one-time charge, which shall be set at the same rate as the fee for a Golden Eagle Passport, and shall entitle the permittee to free admission into any area designated pursuant to this subsection."; and

(B) by striking the third sentence and inserting "No fees of any kind shall be collected from any persons who have a right of access for hunting or fishing privileges under a specific provision of law or treaty or who are engaged in the conduct of official Federal, State, or local government business.";

(7) by striking paragraph (5) and inserting the following:

"(5) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person legally domiciled in, the United States, if such citizen or person applies for such permit and is permanently disabled. Such procedures shall ensure that a lifetime admission permit shall be issued only to persons who have been medically determined to be permanently disabled. A lifetime admission permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and one accompanying individual to general admission into any area designated pursuant to this subsection, notwithstanding the method of travel.";

(8) by striking paragraph (9) and by redesignating paragraph (10) as paragraph (9)";

(9) by striking all but the last sentence of paragraph (11) and redesignating paragraph (11) as paragraph (10); and

(10) by redesignating paragraph (12) as paragraph (11).

(b) RECREATION FEES.—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a) is amended by striking subsection (b) and inserting the following:

"(b) RECREATION USE FEES.—Each agency developing, administering, providing, or furnishing at Federal expense services for such activities as camping, including, but not limited to, back country camping under permit, guarded swimming sites, boat launch facilities, managed parking lots, motorized recreation use and other recreation uses, is authorized, in accordance with this section to provide for the collection of recreation use fees at the place of use or any reasonably convenient location. The administering Secretary may establish both daily and annual recreation use fees.".

(c) CRITERIA, POSTING AND UNIFORMITY OF FEES.—Section 4(d) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(d)) is amended in the first sentence by striking "recreation fees charged by non-Federal public agencies," and inserting "fees charged by other public and private entities,".

(d) PENALTY.—Section 4(e) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(e)) is amended by striking "of not more than $100." and inserting "as provided by law.".

(e) TECHNICAL AMENDMENTS.—Section 4(h) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(h)) is amended—

(1) by striking "Bureau of Outdoor Recreation" and inserting "National Park Service";

(2) by striking "Natural Resources" and inserting "Resources"; and

(3) by striking "Bureau" and inserting "National Park Service".

(f) USE OF FEES.—Section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(i)) is amended—

(1) in the first sentence of paragraph (1)(B) by striking "fee collection costs for that fiscal year" and inserting "fee collection costs for the immediately preceding fiscal year" and by striking "section in that fiscal year" and inserting "section in such immediately preceding fiscal year";

(2) in the second sentence of subparagraph (B) by striking "in that fiscal year"; and

(3) by striking paragraph (4) and inserting the following: "(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 park operations.".

(g) TIME OF REIMBURSEMENT.—Section 4(k) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(k)) is amended by striking the last sentence.

(h) COMMERCIAL TOUR USE FEES.—Section 4(n) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(n)) is amended—

(1) by striking the first sentence of paragraph (1) and inserting "In the case of each unit of the National Park System for which an admission fee is charged under this section, the Secretary of the Interior shall establish, by October 1, 1996, a commercial tour use fee in lieu of a per person admission fee to be imposed on each vehicle entering the unit for the purpose of providing commercial tour services within the unit."; and

(2) by striking the period at the end of paragraph (3) and inserting ", with written notification of such adjustments provided to commercial tour operators 12 months in advance of implementation.".

(i) CONFORMING AMENDMENTS.—

(1) Title I of the Department of the Interior and Related Agencies Appropriations Act, 1994, is amended by striking the second proviso under the heading "ADMINISTRATIVE PROVISIONS" under the heading "NATIONAL PARK SERVICE" (related to recovery of costs associated with special use permits).

(2) Section 3 of the Act entitled "An Act creating the Mount Rushmore National Memorial Commission and defining its purposes and powers", approved February 25, 1929 (45 Stat. 1300, chapter 315), is amended by striking the last sentence.

(3) Section 5 of Public Law 87–657 (16 U.S.C. 459c–5), is amended by striking subsection (e).

(4) Section 3 of Public Law 87–750 (16 U.S.C. 398e) is amended by striking subsection (b).

(5) Section 4(e) of Public Law 92–589 (16 U.S.C. 460bb–3) is amended by striking the first sentence.

(6) Section 6 of Public Law 95–348 (16 U.S.C. 410dd) is amended by striking subsection (j).

(7) Section 207 of Public Law 96–199 (16 U.S.C. 410ff–6) is repealed.

(8) Section 106 of Public Law 96–287 (16 U.S.C. 410gg–5) is amended by striking the last sentence.

(9) Section 204 of Public Law 96–287 (94 Stat. 601) is amended by striking the last sentence.

(10) Section 5 of Public Law 96–428 (94 Stat. 1842; 16 U.S.C. 461 note) is repealed.

(11) Public Law 100–55 (101 Stat. 371; U.S.C. 460l–6a note) is repealed.

SEC. 5452. COVERING OF INCREASED FEE REVENUES INTO SPECIAL ACCOUNTS.

Of the funds deposited in special accounts in the Treasury for the National Park Service, Bureau of Land Management, and Forest Service as set forth in section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(i)), beginning in fiscal year 1997, 80 percent of all receipts earned in the previous year in excess of the following amounts for each covered agency shall be made available to that agency without further appropriation:

(1) National Park System:

(A) $82,000,000 for fiscal year 1997.

(B) $85,000,000 for fiscal year 1998.

(C) $88,000,000 for fiscal year 1999.

(D) $91,000,000 for fiscal year 2000.

(E) $94,000,000 for fiscal year 2001.

(F) $97,000,000 for fiscal year 2002.

(G) $100,000,000 for fiscal year 2003.

(H) $112,000,000 for fiscal year 2004.

(I) $106,000,000 for fiscal year 2005.

(2) Bureau of Land Management:

(A) $4,500,000 for fiscal year 1997.

(B) $5,000,000 for fiscal year 1998.

(C) $5,000,000 for fiscal year 1999.
(D) $5,000,000 for fiscal year 2000.
(E) $5,000,000 for fiscal year 2001.
(F) $5,000,000 for fiscal year 2002.
(G) $5,000,000 for fiscal year 2003.
(H) $5,000,000 for fiscal year 2004.
(I) $5,000,000 for fiscal year 2005.

(3) Forest Service:

(A) $20,000,000 for fiscal year 1997.
(B) $20,600,000 for fiscal year 1998.
(C) $21,200,000 for fiscal year 1999.
(D) $21,900,000 for fiscal year 2000.
(E) $22,500,000 for fiscal year 2001.
(F) $23,600,000 for fiscal year 2002.
(G) $24,300,000 for fiscal year 2003.
(H) $25,000,000 for fiscal year 2004.
(I) $25,800,000 for fiscal year 2005.

Beginning in fiscal year 2006, and in each fiscal year thereafter, the amounts set forth in this section for each covered agency in fiscal year 2005 shall be increased by 4 percent per year, and 80 percent of all receipts earned in excess of such amounts for each covered agency shall be made available to that agency without further appropriation.

SEC. 5453. ALLOCATION AND USE OF FEES.

(a) ALLOCATION.—Beginning in fiscal year 1997, receipts above the amounts stated in section 5452 in each covered agency's special account from the previous fiscal year shall be allocated as follows:

(1) Seventy-five percent shall be allocated among the units or areas of each affected agency in the same proportion as fees collected pursuant to section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a) from a specific unit or area bear to the total amount of such fees collected from all units or areas of the same covered agency for each fiscal year.

(2) Twenty-five percent shall be allocated among each covered agency's units or areas on the basis of need, as determined by the Secretary.

(b) USE.—Expenditures from the special accounts shall be used solely for infrastructure related to visitor use and annual operating expenses related to visitor services at units or areas of the covered agencies.

CHAPTER 12—CONCESSION REFORM

SEC. 5461. SHORT TITLE.

This chapter may be cited as the "Visitor Facilities and Services Enhancement Act of 1995".

SEC. 5462. DEFINITIONS.

In this chapter:

(1) "adjusted gross receipts" means gross receipts less revenue derived from goods and services provided on other than Federal lands or conveyed to units of Government for hunting or fishing licenses or for entrance or recreation fees, or from such other exclusions as the Secretary concerned might apply.

(2) "agency head" means the head of an agency or his or her designated representative.

(3) "bidder" means a person who has submitted, or may submit, a proposal respecting the facilities or services, whether or not such bidder is the current concessioner.

(4) "concessioner" means a person or other entity acting under a concession authorization which provides public services, facilities, or activities on Federal lands pursuant to a concession service agreement or concession license.

(5) "concession authorization" means a concession service agreement or concession license as applicable.

(6) "concession license" means a written contract between the agency head and the concessioner which sets forth the terms and conditions under which the concessioner is authorized to provide recreation services or activities on a limited basis as well as the rights and obligations of the Federal Government.

(7) "concession service agreement" means a written contract between the agency head and the concessioner which sets forth the terms and conditions under which the concessioner is authorized to provide visitor services, facilities, or activities as well as the rights and obligations of the Federal Government.

(8) "Consumer Price Index" means the Consumer Price Index-All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, and from and after such time as such index is no longer published, the Consumer Price Index or other regularly-published cost-of-living index chosen by the Secretary concerned which reasonably approximates the Consumer Price Index specified above.

(9) "gross receipts" means revenue from goods or services provided by concession services, facilities, or activities on Federal lands and waters.

(10) "performance incentive" means a credit based on past performance toward the score awarded by the Secretary concerned to an incumbent concessioner's proposal submitted in response to a solicitation for the reissuance of such incumbent concessioner's contract.

(11) "proposal" means the complete submission for a concession service agreement offered in response to the solicitation for such concession service agreement.

(12) "prospectus" means a document or documents issued by the Secretary concerned and included with a solicitation which sets forth the minimum requirements for the award of a concession service agreement.

(13) "Secretary concerned" means —

(A) the Secretary of the Interior with respect to all concession authorizations issued by the National Park Service, and all concession authorizations for river runner, outfitter, or guide concessions issued by the United States Fish and Wildlife Service and the Bureau of Land Management; and

(B) the Secretary of Agriculture with respect to all river runner, outfitter, or guide concessions issued by the Forest Service.

(14) "selected bidder" means the bidder selected by the Secretary concerned for the award of a concession service agreement until such bidder becomes the concessioner.

(15) "solicitation" means a request by the Secretary concerned for proposals in response to a prospectus.

SEC. 5463. NATURE AND TYPES OF CONCESSION AUTHORIZATIONS.

(a) IN GENERAL.—The Secretary concerned may enter into concession authorizations as follows:

(1) CONCESSION SERVICE AGREEMENT.—A concession service agreement shall be entered into for all concessions where the Secretary concerned determines that the provision of concession services is in the interest of the Federal Government and issues either a competitive offering for concession services, facilities or activities or a noncompetitive offering for such services, facilities, or activities based on a finding that due to special circumstances it is not in the public interest of the United States to award a concession service agreement on a competitive basis.

(2) CONCESSION LICENSE.—Whenever the Secretary concerned makes a determination that public enjoyment of Federal lands would be enhanced through the provision of concession services for one-time, intermittent, or infrequently scheduled activities and that there exists no need to limit the number of concessionaires providing such services, the Secretary shall enter into a concession license with a qualified concessioner. The Secretary concerned may not limit the number of concession licenses issued for the same types of activities in a particular geographic area.

(3) LANDS UNDER MULTIPLE JURISDICTIONS.—In order to reduce administrative costs the Secretaries of the Departments concerned shall designate an agency to be the lead agency concerning concessions which conduct a single operation on lands or waters under the jurisdiction of more than one agency. Unless otherwise agreed to by each such Secretary concerned, the lead agency shall be that agency under whose jurisdiction the concessioner generates the greatest amount of gross receipts. The agency so designated shall issue a single concession authorization and collect a single fee under paragraphs (1) and (2) for such operation.

SEC. 5464. COMPETITIVE SELECTION PROCESS FOR CONCESSION SERVICE AGREEMENTS.

(a) AWARD TO BEST PROPOSAL.—The Secretary concerned shall enter into, and reissue, a concession service agreement with the person whom the Secretary determines in accordance with this section submits the best proposal through a competitive process as defined in this section.

(b) SOLICITATION AND PROSPECTUS.—Prior to making a solicitation for a concession service agreement, the Secretary concerned shall prepare a prospectus for such solicitation, shall publish notice of its availability at least once in such local or national newspapers or trade publications as the Secretary determines appropriate, and shall make such prospectus available upon request to all interested parties. The prospectus shall specify the minimum requirements for such concession service agreement, including but not limited to:

(1) a description of the services and facilities to be provided by the concessioner.

(2) the level of capital investment required by the concessioner (if any).

(3) terms and conditions of the concession service agreement.

(4) minimum facilities and services to be provided by the Secretary concerned to the concessioner, if any, including but not limited to public access, utilities, buildings, and minimum public services.

(5) such other information related to the concession operation available to the Secretary concerned as is not privileged or otherwise exempt from disclosure under Federal law, as the Secretary determines is necessary to allow for the submission of competitive proposals; and

(6) Local hiring preferences provisions, if applicable, and notwithstanding any other provision of law, to increase revenue to the United States by avoiding additional transportation and related costs associated with non-resident labor, each contract awarded by the Department of the Interior for concessioner or commercial use contractor-provided visitor services performed in whole or in part of a State which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment, as determined by the Secretary of Labor shall include a provision requiring the concessioner or commercial use contractor to employ individuals who are residents of such State, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills for the purpose of performing that portion of the contract in such State.

(7) Minimum fees to the United States.

(c) FACTORS AND MINIMUM STANDARDS IN DETERMINING BEST PROPOSAL.—The prospectus shall assign a weight to each factor identified therein related to the importance of such factor in the selection process. Points shall be awarded for each such factor, based on the relative strength of the proposal concerning that factor. In selecting the best proposal, the Secretary concerned shall take into consideration (but shall not be limited to) the following, including whether the proposal meets the minimum requirements (if any) of the Secretary for each of the following:

(1) Responsiveness to the prospectus.

(2) Quality of visitor services to be provided taking into account the nature of equipment and facilities to be provided.

(3) Experience and performance in providing the same or similar accommodations, facilities, or services. This factor shall account for not less than 20 percent of the maximum points available under any prospectus. Where the Secretary concerned determines it to be warranted to provide for a high quality visitor experience, the prospectus for a concession service agreement shall provide greater weight to this factor based on such aspects of the concession service agreement as scope or size, complexity, nature of technical skills required, and site-specific knowledge of the area. The similarity of the qualifying experience outlined in the proposal to the nature of the services required under the

concession service agreement and the length of such qualifying experience shall be the basis for awarding points for this factor.

(4) Record of resource protection (as appropriate for services and activities with potential to impact natural or cultural resources).

(5) Financial capability.

(6) Fees to the United States.

(d) SELECTION PROCESS.—The process for selecting the best proposal shall consist of the following:

(1) First, the Secretary concerned shall identify those proposals which meet the minimum standards (if any) for the factors identified under subsection (c).

(2) Second, the Secretary concerned shall evaluate all proposals identified under paragraph (1), considering all factors identified under subsection (c), as well as performance incentives earned under subsection (e) and renewal penalties incurred under subsection (f).

(3) Third, the Secretary concerned shall offer the concession service agreement to the best qualified applicant as determined by the evaluation under paragraph (2). Prior to any such offer, the Secretary shall certify that such applicant has adequate funds to purchase any investment interest.

(e) PERFORMANCE INCENTIVES.—

(1) In evaluating the proposal of an incumbent concessioner when the Secretary concerned issues a prospectus for the renewal of the concession service agreement, such concessioner is entitled to a performance incentive of—

(A) one percent of the maximum points available under such prospectus for each year in which the concessioner's annual performance is rated as exceeding the requirements outlined in the prospectus or "good", and

(B) a one-time 3-year merit term extension upon a finding that a concessioner has been rated as "good" in each annual performance evaluation through the term of the concession service agreement.

(2) A performance incentive awarded under paragraph (1)(A) may not exceed 10 percent of the maximum points available under such prospectus.

(3) The performance incentive specified under paragraph (1)(A) may only be awarded to a concessioner which meets the monetary definition of a small business under section 3 of the Small Business Act (15 U.S.C. 632). The Board of Contract Appeals within each Department shall adjudicate disputes between the Federal Government and concessionaires regarding performance evaluations.

(f) RENEWAL PENALTY.—In evaluating the proposal of an incumbent concessioner when the Secretary concerned issues a prospectus for the renewal of the concession service agreement, the incumbent concessioner shall be penalized one percent of the maximum points available under such prospectus for each year in which the concessioner's annual performance is found to be unsatisfactory.

(g) INAPPLICABILITY OF NEPA TO TEMPORARY EXTENSIONS AND SIMILAR REISSUANCE OF CONCESSIONS AGREEMENTS.—The temporary extension of a concession authorization, or reissuance of a

concession authorization to provide concession services similar in nature and amount to concession services provided under the previous authorization, is hereby determined not to be a major Federal action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et. seq.).

(h) PROVISION FOR ADDITIONAL RELATED SERVICES.—The Secretary concerned may modify the concession service agreement to allow concessionaires to provide services closely related to such agreement only if the Secretary concerned determines that such changes would enhance the safety or enjoyment of visitors and would not unduly restrict the award of future concession service agreements.

SEC. 5465. CAPITAL IMPROVEMENTS.

(a) IN GENERAL.—Concessionaires may construct or finance construction under terms of section 5470 only such public facilities on Federal lands as are to be used by the concessioner under the terms of its concession service agreement or facilities which are necessary for the concessioner to administer such public facilities on Federal lands.

(b) INVESTMENT INTEREST.—

(1) IN GENERAL.—A concessioner that is required or authorized under a concession service agreement pursuant to this subchapter to acquire or construct any structure, improvement, or fixture pursuant to such agreement on Federal lands shall have an investment interest therein, as defined in this subchapter. Any such investment interest shall consist of all incidents of ownership, except legal title which shall be vested in the Federal Government. Such investment interest shall not be extinguished by the expiration of such agreement. Such investment interest may be assigned, transferred, encumbered or relinquished.

(2) LIMITATION.—Such investment interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use of any improvement in which the concessioner has an investment interest shall be wholly subject to the applicable provisions of the concession service agreement and of laws and regulations relating to the area.

(3) FEDERAL PROPERTY.—Notwithstanding paragraph (1), a concession service agreement may specify that certain new structures, improvements, or fixtures required to be constructed under terms of the concession service agreement shall be property of the Federal Government subject only to the right of the concessioner to use such improvements during the term of such agreement and that the concessioner shall not be accorded an investment interest therein. Concession service agreements shall not, to the extent practicable, provide for a concessioner to obtain an investment interest in any building or facilities wholly owned by the Federal Government.

(c) SALE OF ASSETS.—If the existing concessioner is not the selected bidder at the time of reissuance of a concession service agreement, the Secretary concerned shall require the new concessioner to buy the investment interest of the existing concession. In the event that the successor concessioner is unable to fully pay such invest-

ment interest, any deficiency shall be paid by the Federal Government.

(d) CLOSURE OF CONCESSIONER FACILITIES.—If the Secretary concerned determines that the public interest, by reason of public and safety considerations or for other reasons beyond the control of the concessioner, requires the discontinuation or closure of facilities in which the concessioner has an investment interest, the Federal Government shall compensate the concessioner in the amount equal to the value of the investment interest.

(e) DETERMINATION OF VALUE OF INVESTMENT INTEREST.—For purposes of this subchapter, the investment interest of any capital improvement at the end of the concession service agreement period shall be an amount equal to the actual cost of construction or purchase of such investment interest or such capital improvement adjusted from the time of completion of such construction by changes in the Consumer Price Index less depreciation evidenced by the condition and prospective serviceability in comparison with a new unit of like kind. The Secretary concerned shall include the value to be paid by the selected bidder for any existing investment interest in the prospectus for the related concession service agreement.

SEC. 5466. DURATION OF CONCESSION AUTHORIZATION.

(a) CONCESSION SERVICE AGREEMENT.—The standard term of a concession service agreement shall be 10 years. The Secretary concerned may issue a concession service agreement for less than 10 years if the Secretary determines that the average annual gross receipts over the life of the concession service agreement would be less than $100,000. The Secretary concerned may not issue a concession service agreement for less than 5 years. The Secretary concerned shall issue a concession service agreement for longer than 10 years if the Secretary determines that such longer term is in the public interest or necessary due to the extent of investment and associated financing requirements and to meet the obligations assumed. The term for a concession service agreement may not exceed 30 years.

(b) CONCESSION LICENSE.—The term for a concession license may not exceed 2 years.

(c) TEMPORARY EXTENSION.—The Secretary concerned may agree to temporary extensions of concession service agreements for up to 2 years on a noncompetitive basis to avoid interruption of services to the public.

SEC. 5467. RATES AND CHARGES TO THE PUBLIC.

In general, rates and charges to the public shall be set by the concessioner. For concession service agreements only, a concessioner's rates and charges to the public shall be subject to the approval of the Secretary concerned in those instances where the Secretary determines that sufficient competition for such facilities and services does not exist within or in close proximity to the area in which the concessioner operates. In those instances, the concession service agreement shall state that the reasonableness of the concessioner's rates and charges to the public shall be reviewed and approved by the Secretary concerned primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration for length of season, seasonal variations, average percentage of occu-

pancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary concerned. Such review shall be completed within 90 days of receipt of all necessary information, or the requirement for the Secretary's approval shall be waived and such rates and charges as proposed by the concessioner considered to be approved for immediate use.

SEC. 5468. TRANSFERABILITY OF CONCESSION AUTHORIZATIONS.

(a) CONCESSION SERVICE AGREEMENTS.—

(1) APPROVAL REQUIRED.—A concession service agreement is transferable or assignable only with the approval of the Secretary concerned, which approval may not be unreasonably withheld or delayed. The Secretary may not approve any such transfer or assignment if the Secretary determines that the prospective concessioner is or is likely to be unable to completely satisfy all of the material requirements, term, and conditions of the agreement or that the terms of the transfer or assignment would preclude providing appropriate facilities or services to the public at reasonable rates.

(2) CONSIDERATION PERIOD.—If the Secretary concerned fails to approve or disapprove a transfer or assignment under paragraph (1) within 90 days after the date on which the Secretary receives all necessary information requested by the Secretary with respect to such transfer, the transfer or assignment shall be deemed to have been approved.

(3) NO MODIFICATION OF TERMS AND CONDITIONS.—The terms and conditions of the concessions service agreement shall not be subject to modification by reason of any transfer or assignment under this section.

(b) CONCESSION LICENSE.—A concession license may not be transferred.

SEC. 5469. FEES CHARGED BY THE UNITED STATES FOR CONCESSION AUTHORIZATIONS.

(a) IN GENERAL.—The Secretary concerned shall charge a fee for the privilege of providing concession services pursuant to this subchapter. The fee for any concession service agreement may include any of the following:

(1) An annual cash payment for the privilege of providing concession services.

(2) The amount required for capital improvements required pursuant to section 5465 (a).

(3) Fees for rental or lease of Government-owned facilities or lands occupied by the concessioner.

(4) Expenditures for maintenance of or improvements to Government-owned facilities occupied by the concessioner.

(b) ESTABLISHMENT OF AMOUNT.—

(1) MINIMUM ACCEPTABLE FEE.—The Secretary concerned shall establish a minimum fee for each applicable category specified in paragraphs (1) through (4) of subsection (a) which is acceptable to the Secretary under this section and shall include the minimum fee in the prospectus under section 5464. This fee shall be based on historical data, where available, as

well as industry-specific and other market data available to the Secretary concerned.

(2) FINAL FEE.—Except as provided in paragraph (3), the final fee shall be the amount bid by the selected applicant under section 5464.

(3) SUBSTANTIALLY SIMILAR SERVICES IN A SPECIFIC GEOGRAPHIC AREA.—When the Secretary concerned simultaneously offers authorizations for more than one river runner, outfitter, or guide concession operation to provide substantially similar services in a defined geographic area, the concession fee for all such concessionaires shall be specified by the Secretary concerned in the prospectus. The Secretary concerned shall base the fee on historical data, where available, as well as on industry-specific and other market data available to the Secretary concerned or may establish a charge per user day.

(c) ADJUSTMENT OF FEES.—The amount of any fee for the term of the concession service agreement shall be set at the beginning of the concession authorization and may only be modified if stated in the contract on the basis of inflation, when the annual payment is not determined by a percentage of adjusted gross receipts (as measured by changes in the Consumer Price Index), to reflect substantial changes from the conditions specified in the prospectus, or in the event of an unforseen disaster.

(d) CONCESSION LICENSE FEE.—The fee for a concession license shall at least cover the program administrative costs and may not be changed over the term of the license.

SEC. 5470. DISPOSITION OF FEES.

(a) CONCESSION IMPROVEMENT ACCOUNT.—

(1) IN GENERAL.—The Secretary concerned shall, whenever the concession service agreement requires or authorizes the concessioner to perform maintenance or make improvements to Government-owned facilities occupied by the concessioner, require the concessioner to establish a concession improvement account. The concessioner shall deposit into this account all funds for maintenance of or improvements to Government-owned facilities occupied by the concessioner;

(2) TERMS AND CONDITIONS.—The account shall be maintained by the concessioner in an interest bearing account in a Federally insured financial institution. The concessioner shall maintain the account separately from any other funds or accounts and shall not commingle the money in the account with any other money.

(3) DISBURSEMENTS.—The concessioner shall make disbursements from the account for improvements and other activities, only for capital improvements or maintenance of improvements to Government-owned facilities occupied by the concessioner as specified in the concession service agreement.

(4) TRANSFER OF REMAINING BALANCE.—On the termination of a concession authorization, or on the transfer of a concession service agreement, any remaining balance in the account shall be transferred by the concessioner to the successor concessioner, to be used solely as set forth in this subsection. In the event there is no successor concessioner, the account balance shall be deposited in the Treasury as miscellaneous receipts.

(b) When the concessioner is required to make capital improvements to other than Government-owned facilities occupied by the concessioner in accordance with a concession service agreement, the concessioner shall have the option to control and expend such funds directly.

(c) AMOUNTS RECEIVED RELATING TO PRIVILEGE OF PROVIDING CONCESSION SERVICES AND RENTAL OF GOVERNMENT-OWNED FACILITIES.—

(1) DEPOSIT INTO TREASURY.—The Secretary concerned shall deposit in the Treasury of the United States as miscellaneous receipts all funds not deposited in concession improvement accounts or funds for capital improvements specified in (b) above, including specifically amounts received for a fiscal year for the privilege of providing concession services and the rental of Government-owned facilities, except that of the amount of fees paid by vessel operators for the privilege of entering into Glacier Bay, Alaska, 50 percent of such fees for the 5-year period beginning on the first full fiscal year following the date of enactment of this subchapter shall be deposited into a special account and that such funds shall be available without further appropriation and may only be used to conduct research to quantify any effect of such vessel activity on wildlife and other natural resource values of Glacier Bay National Park. For the National Park Service such deposits into the Treasury shall total not less than the amounts specified in the table in paragraph (2). For the other agencies covered under this subchapter, the Secretary concerned shall develop a schedule of anticipated receipts to be deposited to the Treasury and submit such schedule to the appropriate Congressional committees not later than 18 months after the date of enactment of this Act. Nothing in this chapter shall be construed to modify any provision of law relating to sharing of Federal receipts with any other level of Government.

(2) DEPOSIT INTO CONCESSION IMPROVEMENT ACCOUNTS.—The table referred to in paragraph (1), expressed by fiscal year, is as follows:

National Park Service

"Fiscal year:	*Amount:*
1997	*$15,800,000*
1998	*$21,100,000*
1999	*$26,700,000*
2000	*$32,300,000*
2001	*$38,200,000*
2002	*$44,400,000.*

(d) Beginning in fiscal year 1998, the Inspector General of the Department concerned shall conduct a biennial audit of concession fees generated pursuant to this chapter. The Inspector General shall make a determination as to whether concession fees are being collected and expended in accordance with this chapter and shall submit copies of each audit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 5471. REGULATIONS.

The Secretary concerned shall promulgate regulations to implement this chapter no later than 2 years after the date of enactment of this Act. Subsequent to the date of enactment of this chapter, no new concession authorization may be issued, nor may any existing concession authorization be amended or extended, unless such authorization, amendment, or extension is fully consistent with sections 5465, 5469(c), and 5470.

SEC. 5472. RELATIONSHIP TO OTHER LAWS.

(a) REPEALS.—

(1) The Act entitled "An Act relating to the establishment of concession policies in the areas administered by the National Park Service and for other purposes" (16 U.S.C. 20–20g) approved October 9, 1965, is repealed.

(b) SAVINGS.—

(1) IN GENERAL.—The repeal of any provision, the superseding of any provision, and the amendment of any provision, of an Act referred to in subsection (a) shall not affect the validity of any authorizations entered into under any such Act. The provisions of this chapter shall apply to any such authorizations, except to the extent such provisions are inconsistent with the express terms and conditions of such authorizations.

(2) RIGHT OF RENEWAL.—The right of renewal explicitly provided for by any concession contract under any such provision shall be preserved for a single renewal of a contract following the enactment of, or concession authorization under, this chapter.

(3) VALUE OF CAPITAL IMPROVEMENTS OR POSSESSORY INTEREST.—Nothing in this chapter shall be construed to change the value as of the date of enactment of this chapter for existing capital improvements or possessory interest as identified in concession contracts entered into before the date of enactment of this Act. Subsequent to enactment of this chapter, the increase in value for any possessory interest established under any concession contract in effect on the date of enactment of this chapter shall be as provided for in this chapter unless otherwise specifically provided in the contract.

(4) ANILCA.—Nothing in this chapter shall be construed to amend, supersede or otherwise affect any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

(5) PROCEDURES FOR CONSIDERING EXISTING CONCESSIONAIRES IN REISSUANCE OF CONTRACTS.—In the case of a concession contract which has expired prior to the date of the enactment of this Act, or within 5 years after the date of the enactment of this Act, an incumbent concessioner shall be entitled to a one-time bonus of five percent of the maximum points available in the reissuance of a previous concession authorization. For any concession contract entered into prior to the date of enactment of this Act, which is projected to terminate 5 years or later after the date of enactment of this Act, any concessioner shall be entitled to a performance incentive in accordance with this chapter. The concessioner shall be entitled to an evaluation

of "good" for each year in which the Secretary concerned does not complete an evaluation as provided for in this chapter.

TITLE VI—FEDERAL RETIREMENT AND RELATED PROVISIONS

Subtitle A—Civil Service and Postal Service Provisions

SEC. 6001. EXTENSION OF DELAY IN COST-OF-LIVING ADJUSTMENTS IN FEDERAL EMPLOYEE RETIREMENT BENEFITS THROUGH FISCAL YEAR 2002.

Section 11001(a) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66; 107 Stat. 408) is amended in the matter preceding paragraph (1) by striking out "or 1996," and inserting in lieu thereof "1996, 1997, 1998, 1999, 2000, 2001, or 2002,".

SEC. 6002. INCREASED CONTRIBUTIONS TO FEDERAL CIVILIAN RETIREMENT SYSTEMS.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) DEDUCTIONS.—The first sentence of section 8334(a)(1) of title 5, United States Code, is amended to read as follows: "The employing agency shall deduct and withhold from the basic pay of an employee, Member, Congressional employee, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Appeals for the Armed Forces, United States magistrate, or Claims Court judge, as the case may be, the percentage of basic pay applicable under subsection (c).".

(2) AGENCY CONTRIBUTIONS.—

(A) INCREASE IN AGENCY CONTRIBUTIONS DURING CALENDAR YEARS 1996 THROUGH 2002.—Section 8334(a)(1) of title 5, United States Code (as amended by this section) is further amended—

(i) by inserting "(A)" after "(1)"; and

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

"(B)(i) Notwithstanding subparagraph (A), the agency contribution under the second sentence of such subparagraph, during the period beginning on January 1, 1996, through December 31, 2002—

"(I) for each employing agency (other than the United States Postal Service or the Washington Metropolitan Airport Authority) shall be 8.51 percent of the basic pay of an employee, Congressional employee, and a Member of Congress, 9.01 percent of the basic pay of a law enforcement officer, a member of the Capitol Police, and a firefighter, and 8.51 percent of the basic pay of a Claims Court judge, a United States magistrate, a judge of the United States Court of Appeals for the Armed Services, and a bankruptcy judge, as the case may be; and

"(II) for the United States Postal Service and the Washington Metropolitan Airport Authority shall be 7

percent of the basic pay of an employee and 7.5 percent of the basic pay of a law enforcement officer or firefighter.".

(B) NO REDUCTION IN AGENCY CONTRIBUTIONS BY THE POSTAL SERVICE.—Agency contributions by the United States Postal Service under section 8348(h) of title 5, United States Code—

(i) shall not be reduced as a result of the amendments made under paragraph (3) of this subsection; and

(ii) shall be computed as though such amendments had not been enacted.

(3) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.—The table under section 8334(c) of title 5, United States Code, is amended—

(A) in the matter relating to an employee by striking out

"7	*After December 31, 1969."*

and inserting in lieu thereof the following:

"7	*January 1, 1970, to December 31, 1995.*
7.25 .	*January 1, 1996, to December 31, 1996.*
7.4 ...	*January 1, 1997, to December 31, 1997.*
7.5 ...	*January 1, 1998, to December 31, 2002.*
7	*After December 31, 2002.";*

(B) in the matter relating to a Member or employee for Congressional employee service by striking out

"7½ ...	*After December 31, 1969."*

and inserting in lieu thereof the following:

"7.5	*January 1, 1970, to December 31, 1995.*
7.25 .	*January 1, 1996, to December 31, 1996.*
7.4 ...	*January 1, 1997, to December 31, 1997.*
7.5 ...	*January 1, 1998, to December 31, 2002.*
7	*After December 31, 2002.";*

(C) in the matter relating to a Member for Member service by striking out

"8	After December 31, 1969."

and inserting in lieu thereof the following:

"8	January 1, 1970, to December 31, 1995.
7.25 .	January 1, 1996, to December 31, 1996.
7.4 ...	January 1, 1997, to December 31, 1997.
7.5 ...	January 1, 1998, to December 31, 2002.
7	After December 31, 2002.";

(D) in the matter relating to a law enforcement officer for law enforcement service and firefighter for firefighter service by striking out

"7½ ...	After December 31, 1974."

and inserting in lieu thereof the following:

"7.5	January 1, 1975, to December 31, 1995.
7.75 .	January 1, 1996, to December 31, 1996.
7.9 ...	January 1, 1997, to December 31, 1997.
8	January 1, 1998, to December 31, 2002.
7.5 ...	After December 31, 2002.";

(E) in the matter relating to a bankruptcy judge by striking out

"8	After December 31, 1983."

and inserting in lieu thereof the following:

"8	January 1, 1984, to December 31, 1995.
7.25 .	January 1, 1996, to December 31, 1996.

7.4 ...	January 1, 1997, to December 31, 1997.
7.5 ...	January 1, 1998, to December 31, 2002.
7	After December 31, 2002.'';

(F) in the matter relating to a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court by striking out

''8	On and after the date of the enactment of the Department of Defense Authorization Act, 1984.''

and inserting in lieu thereof the following:

''8	The date of the enactment of the Department of Defense Authorization Act, 1984, to December 31, 1995.
7.25 .	January 1, 1996, to December 31, 1996.
7.4 ...	January 1, 1997, to December 31, 1997.
7.5 ...	January 1, 1998, to December 31, 2002.
7	After December 31, 2002.'';

(G) in the matter relating to a United States magistrate by striking out

''8	After September 30, 1987.''

and inserting in lieu thereof the following:

''8	October 1, 1987, to December 31, 1995.
7.25 .	January 1, 1996, to December 31, 1996.
7.4 ...	January 1, 1997, to December 31, 1997.
7.5 ...	January 1, 1998, to December 31, 2002.
7	After December 31, 2002.'';

(H) in the matter relating to a Claims Court judge by striking out

	"8	After September 30, 1988."

and inserting in lieu thereof the following:

	"8	October 1, 1988, to December 31, 1995.
	7.25 .	January 1, 1996, to December 31, 1996.
	7.4 ...	January 1, 1997, to December 31, 1997.
	7.5 ...	January 1, 1998, to December 31, 2002.
	7	After December 31, 2002.";

and

(I) by inserting after the matter relating to a Claims Court judge the following:

"Member of the Capitol Police	2.5	August 1, 1920, to June 30, 1926.
	3.5	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6.5	November 1, 1956, to December 31, 1969.
	7.5	January 1, 1970, to December 31, 1995.
	7.75 ...	January 1, 1996, to December 31, 1996.
	7.9	January 1, 1997, to December 31, 1997.
	8	January 1, 1998, to December 31, 2002.
	7.5	After December 31, 2002.".

(4) OTHER SERVICE.—

(A) MILITARY SERVICE.—Section 8334(j) of title 5, United States Code, is amended—

(i) in paragraph (1)(A) by inserting "and subject to paragraph (5)," after "Except as provided in subparagraph (B),"; and

(ii) by adding at the end thereof the following new paragraph:

"(5) Effective with respect to any period of military service after December 31, 1995, the percentage of basic pay under section 204 of title 37 payable under paragraph (1) shall be equal to the same percentage as would be applicable under section 8334(c) for that same period for service as an employee, subject to paragraph (1)(B).".

(B) VOLUNTEER SERVICE.—Section 8334(l) of title 5, United States Code, is amended—

(i) in paragraph (1) by adding at the end thereof the following: "This paragraph shall be subject to paragraph (4)."; and

(ii) by adding at the end thereof the following new paragraph:

"(4) Effective with respect to any period of service after December 31, 1995, the percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1) shall be equal to the same percentage as would be applicable under section 8334(c) for that same period for service as an employee.".

(b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—

(1) INDIVIDUAL DEDUCTIONS AND WITHHOLDINGS.—

(A) IN GENERAL.—Section 8422(a) of title 5, United States Code, is amended by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The percentage to be deducted and withheld from basic pay for any pay period shall be equal to—

"(A) the applicable percentage under paragraph (3), minus

"(B) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (relating to rate of tax for old-age, survivors, and disability insurance).

"(3) The applicable percentage under this paragraph, for civilian service shall be as follows:

Employee	*7*	*Before January 1, 1996.*
	7.25	*January 1, 1996, to December 31, 1996.*
	7.4	*January 1, 1997, to December 31, 1997.*
	7.5	*January 1, 1998, to December 31, 2002.*
	7	*After December 31, 2002.*
Congressional employee	*7.5*	*Before January 1, 1996.*
	7.25	*January 1, 1996, to December 31, 1996.*
	7.4	*January 1, 1997, to December 31, 1997.*
	7.5	*January 1, 1998, to December 31, 2002.*
	7	*After December 31, 2002.*

Member	*7.5*	*Before January 1, 1996.*
	7.25	*January 1, 1996, to December 31, 1996.*
	7.4	*January 1, 1997, to December 31, 1997.*
	7.5	*January 1, 1998, to December 31, 2002.*
	7	*After December 31, 2002.*
Law enforcement officer, firefighter, member of the Capitol Police, or air traffic controller.	*7.5*	*Before January 1, 1996.*
	7.75	*January 1, 1996, to December 31, 1996.*
	7.9	*January 1, 1997, to December 31, 1997.*
	8	*January 1, 1998, to December 31, 2002.*
	7.5	*After December 31, 2002.*

(B) MILITARY SERVICE.—Section 8422(e) of title 5, United States Code, is amended—

(i) in paragraph (1)(A) by inserting "and subject to paragraph (6)," after "Except as provided in subparagraph (B),"; and

(ii) by adding at the end thereof the following:

"(6) The percentage of basic pay under section 204 of title 37 payable under paragraph (1), with respect to any period of military service performed during—

"(A) January 1, 1996, through December 31, 1996, shall be 3.25 percent;

"(B) January 1, 1997, through December 31, 1997, shall be 3.4 percent; and

"(C) January 1, 1998, through December 31, 2002, shall be 3.5 percent.".

(C) VOLUNTEER SERVICE.—Section 8422(f) of title 5, United States Code, is amended—

(i) in paragraph (1) by adding at the end thereof the following: "This paragraph shall be subject to paragraph (4)."; and

(ii) by adding at the end the following:

"(4) The percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1), with respect to any period of volunteer service performed during—

"(A) January 1, 1996, through December 31, 1996, shall be 3.25 percent;

"(B) January 1, 1997, through December 31, 1997, shall be 3.4 percent; and

"(C) January 1, 1998, through December 31, 2002, shall be 3.5 percent.".

(2) NO REDUCTION IN AGENCY CONTRIBUTIONS.—Agency contributions under section 8423 (a) and (b) of title 5, United

States Code , shall not be reduced as a result of the amendments made under paragraph (1) of this subsection.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after January 1, 1996.

SEC. 6003. FEDERAL RETIREMENT PROVISIONS RELATING TO MEMBERS OF CONGRESS AND CONGRESSIONAL EMPLOYEES.

(a) RELATING TO THE YEARS OF SERVICE AS A MEMBER OF CONGRESS AND CONGRESSIONAL EMPLOYEES FOR PURPOSES OF COMPUTING AN ANNUITY.—

(1) CSRS.—Section 8339 of title 5, United States Code, is amended—

(A) in subsection (a) by inserting "or Member" after "employee"; and

(B) by striking out subsections (b) and (c).

(2) FERS.—Section 8415 of title 5, United States Code, is amended—

(A) by striking out subsections (b) and (c);

(B) in subsections (a) and (g) by inserting "or Member" after "employee" each place it appears; and

(C) in subsection (g)(2) by striking out "Congressional employee".

(b) ACCRUAL RATE FOR MEMBER AND CONGRESSIONAL EMPLOYEE SERVICE PERFORMED BUT NOT VESTED BEFORE EFFECTIVE DATE.—

(1) APPLICATION.—This subsection shall apply to an individual who—

(A) is a Member of Congress or Congressional employee on December 31, 1995;

(B) has performed less than 5 years of service as a Member of Congress or Congressional employee on December 31, 1995; and

(C) after December 31, 1995, completes 5 years of service as a Member of Congress or Congressional employee, that includes a period of service performed as a Member of Congress or Congressional employee before January 1, 1996.

(2) COMPUTATION OF ANNUITY.— In computing the annuity of an individual described under paragraph (1)—

(A) any period of service as a Member of Congress or Congressional employee performed before January 1, 1996, shall be computed under section 8339 or 8415 of title 5, United States Code (as though the amendments under subsection (a) of this section were not enacted); and

(B) the 5 year service requirement under subsections (b) and (c) of section 8339 or 8415 of such title (as in effect before the date of enactment of this Act) shall be deemed fulfilled.

(c) CAPITOL POLICE.—Section 8339(q) of title 5, United States Code, is amended by striking out "with subsection (b), except that, in the case of a member who retires under section 8335(d) or 8336(m), and who meets the requirements of subsection (b)(2)," and inserting in lieu thereof "with subsection (a), except that in the case of a member who retires under section 8335(d) or 8336(m), and who

has deductions withheld from his pay or has made deposit covering his last 5 years of civilian service,".

(d) ADMINISTRATIVE REGULATIONS.—The Office of Personnel Management, in consultation with the Secretary of the Senate and the Clerk of the House of Representatives, may prescribe regulations to carry out the provisions of this section and the amendments made by this section for applicable employees and Members of Congress.

(e) EFFECTIVE DATES.—

(1) YEARS OF SERVICE; ANNUITY COMPUTATION.—

(A) SERVICE AFTER EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1996, and shall apply only with respect to the computation of an annuity relating to—

(i) the service of a Member of Congress as a Member or as a Congressional employee performed on or after January 1, 1996; and

(ii) the service of a Congressional employee as a Congressional employee performed on or after January 1, 1996.

(B) SERVICE BEFORE EFFECTIVE DATE.—An annuity shall be computed as though the amendments made under subsection (a) had not been enacted with respect to—

(i) the service of a Member of Congress as a Member or a Congressional employee or military service performed before January 1, 1996; and

(ii) the service of a Congressional employee as a Congressional employee or military service performed before January 1, 1996.

(C) ALTERNATIVE EFFECTIVE DATE RELATING TO MEMBERS OF CONGRESS.—If a court of competent jurisdiction makes a final determination that a provision of this paragraph violates the 27th amendment of the United States Constitution, the effective date and application dates relating to Members of Congress shall be January 1, 1997.

(2) ADMINISTRATIVE PROVISIONS.—The provisions of subsections (b), (c), and (d) shall take effect on the date of the enactment of this Act.

SEC. 6004. ACCRUAL RATES RELATING TO CERTAIN JUDGES WITH SIMILAR TREATMENT AS CONGRESSIONAL SERVICE.

(a) JUDGE OF THE UNITED STATES COURT OF MILITARY APPEALS.—Section 8339(d)(7) of title 5, United States Code, is amended by striking out "service." and inserting in lieu thereof "service performed before January 1, 1996.".

(b) CLAIMS COURT JUDGE, BANKRUPTCY JUDGE, UNITED STATES MAGISTRATE.—Section 8339(n) of title 5, United States Code, is amended by striking out "service." and inserting in lieu thereof "service performed before January 1, 1996. The annuity of any such employee is, with respect to any service referred to in the preceding sentence that is performed on or after January 1, 1996, computed under subsection (a).".

SEC. 6005. REPEAL OF AUTHORIZATION OF TRANSITIONAL APPROPRIATIONS FOR THE UNITED STATES POSTAL SERVICE.

(a) REPEAL.—

(1) IN GENERAL.—Section 2004 of title 39, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) The table of sections for chapter 20 of such title is amended by repealing the item relating to section 2004.

(B) Section 2003(e)(2) of such title is amended by striking "sections 2401 and 2004" each place it appears and inserting "section 2401".

(b) CLARIFICATION THAT LIABILITIES FORMERLY PAID PURSUANT TO SECTION 2004 REMAIN LIABILITIES PAYABLE BY THE POSTAL SERVICE.—Section 2003 of title 39, United States Code, is amended by adding at the end the following:

"(h) Liabilities of the former Post Office Department to the Employees' Compensation Fund (appropriations for which were authorized by former section 2004, as in effect before the effective date of this subsection) shall be liabilities of the Postal Service payable out of the Fund.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—This section and the amendments made by this section shall be effective as of October 1, 1995.

(2) PROVISIONS RELATING TO PAYMENTS FOR FISCAL YEAR 1996.—

(A) AMOUNTS NOT YET PAID.—No payment may be made to the Postal Service Fund, on or after the date of the enactment of this Act, pursuant to any appropriation for fiscal year 1996 authorized by section 2004 of title 39, United States Code (as in effect before the effective date of this section).

(B) AMOUNTS PAID.—If any payment to the Postal Service Fund is or has been made pursuant to an appropriation for fiscal year 1996 authorized by such section 2004, then an amount equal to the amount of such payment shall be paid from such Fund into the Treasury as miscellaneous receipts.

Subtitle B—Patent and Trademark Fees

SEC. 6011. PATENT AND TRADEMARK FEES.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended—

(1) in subsection (a) by striking "1998" and inserting "2002";

(2) in subsection (b)(2) by striking "1998" and inserting "2002"; and

(3) in subsection (c)—

(A) by striking "through 1998" and inserting "through 2002"; and

(B) by adding at the end the following:

"(9) $119,000,000 in fiscal year 1999.

"(10) $119,000,000 in fiscal year 2000.

"(11) $119,000,000 in fiscal year 2001.

"(12) $119,000,000 in fiscal year 2002.".

Subtitle C—GSA Property Sales

SEC. 6021. SALE OF GOVERNORS ISLAND, NEW YORK.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of General Services shall dispose of by sale at fair market value all rights, title, and interests of the United States in and to the land of, and improvements to, Governors Island, New York.

(b) RIGHT OF FIRST REFUSAL.—Before a sale is made under subsection (a) to any other parties, the State of New York and the city of New York shall be given the right of first refusal to purchase all or part of Governors Island. Such right may be exercised by either the State of New York or the city of New York or by both parties acting jointly.

(c) PROCEEDS.—Proceeds from the disposal of Governors Island under subsection (a) shall be deposited in the general fund of the Treasury and credited as miscellaneous receipts.

SEC. 6022. SALE OF AIR RIGHTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of General Services shall sell, at fair market value and in a manner to be determined by the Administrator, the air rights adjacent to Washington Union Station described in subsection (b), including air rights conveyed to the Administrator under subsection (d). The Administrator shall complete the sale by such date as is necessary to ensure that the proceeds from the sale will be deposited in accordance with subsection (c).

(b) DESCRIPTION.—The air rights referred to in subsection (a) total approximately 16.5 acres and are depicted on the plat map of the District of Columbia as follows:

(1) Part of lot 172, square 720.

(2) Part of lots 172 and 823, square 720.

(3) Part of lot 811, square 717.

(c) PROCEEDS.—Before September 30, 1996, proceeds from the sale of air rights under subsection (a) shall be deposited in the general fund of the Treasury and credited as miscellaneous receipts.

(d) CONVEYANCE OF AMTRAK AIR RIGHTS.—

(1) GENERAL RULE.—As a condition of future Federal financial assistance, Amtrak shall convey to the Administrator of General Services on or before December 31, 1995, at no charge, all of the air rights of Amtrak described in subsection (b).

(2) FAILURE TO COMPLY.—If Amtrak does not meet the condition established by paragraph (1), Amtrak shall be prohibited from obligating Federal funds after March 1, 1996.

SEC. 6023. AVAILABILITY OF SURPLUS PROPERTY FOR HOMELESS ASSISTANCE.

(a) REPEAL.—(1) Title V of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411 et seq.) is repealed.

(2) The table of contents in section 101(b) of that Act is amended by striking the items relating to title V.

(3) This subsection shall be effective October 1, 1995.

(b) AUTHORITY TO TRANSFER SURPLUS REAL PROPERTY FOR HOUSING USE.—Section 203 of the Federal Property and Adminis-

trative Services Act of 1949 (40 U.S.C. 484) is amended by adding at the end the following:

"(r) Under such regulations as the Administrator may prescribe, and in consultation with appropriate local governmental authorities, the Administrator may transfer to any nonprofit organization which exists for the primary purpose of providing housing or housing assistance for homeless individuals or families, such surplus real property, including buildings, fixtures, and equipment situated thereon, as is needed for housing use.

"(s)(1) Under such regulations as the Administrator may prescribe, and in consultation with appropriate local governmental authorities, the Administrator may transfer to any non-profit organization which exists for the primary purpose of providing housing or housing assistance for low-income individuals or families such surplus real property, including buildings, fixtures, and equipment situated thereon, as is needed for housing use.

"(2) In making transfers under this subsection, the Administrator shall take such actions, which may include grant agreements with an organization receiving a grant, as may be necessary to ensure that—

"(A) assistance provided under this subsection is used to facilitate and encourage homeownership opportunities through the construction of self-help housing, under terms which require that the person receiving the assistance contribute a significant amount of labor toward the construction; and

"(B) the dwellings constructed with property transferred under this subsection shall be quality dwellings that comply with local building and safety codes and standards and shall be available at prices below the prevailing market prices.".

TITLE VII—TRANSFORMATION OF THE MEDICAID PROGRAM

SEC. 7000. SHORT TITLE OF TITLE; TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE OF TITLE.—This title may be cited as the "Medicaid Transformation Act of 1995".

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

SEC. 7001. TRANSFORMATION OF MEDICAID PROGRAM.

The Social Security Act is amended by adding at the end the following new title:

"TITLE XXI—MEDIGRANT PROGRAM FOR LOW-INCOME INDIVIDUALS AND FAMILIES

"TABLE OF CONTENTS OF TITLE

"SEC. 2100. PURPOSE; STATE MEDIGRANT PLANS.

"(a) PURPOSE.—The purpose of this title is to provide block grants to States to enable them to provide medical assistance to low-income individuals and families in a more effective, efficient, and responsive manner.

"(b) STATE PLAN REQUIRED.—A State is not eligible for payment under section 2122 of this title unless the State has submitted to the Secretary under part E a plan (in this title referred to as a 'MediGrant plan') that—

"(1) sets forth how the State intends to use the funds provided under this title to provide medical assistance to needy individuals and families consistent with the provisions of this title, and

"(2) is approved under such part.

"(c) CONTINUED APPROVAL.—An approved MediGrant plan shall continue in effect unless and until—

"(1) the State amends the plan under section 2152,

"(2) the State terminates participation under this title under section 2153, or

"(3) the Secretary finds substantial noncompliance of the plan with the requirements of this title under section 2154.

"(d) STATE ENTITLEMENT.—This title constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under part C.

"PART A—OBJECTIVES, GOALS, AND PERFORMANCE UNDER STATE PLANS

"SEC. 2101. DESCRIPTION OF STRATEGIC OBJECTIVES AND PERFORMANCE GOALS.

"(a) DESCRIPTION.—A MediGrant plan shall include a description of the strategic objectives and performance goals the State has established for providing health care services to low-income populations under this title, including a general description of the manner in which the plan is designed to meet these objectives and goals.

"(b) CERTAIN OBJECTIVES AND GOALS REQUIRED.—A MediGrant plan shall include strategic objectives and performance goals relating to rates of childhood immunizations and reductions in infant mortality and morbidity.

"(c) CONSIDERATIONS.—In specifying these objectives and goals the State may consider factors such as the following:

"(1) The State's priorities with respect to providing assistance to low-income populations.

"(2) The State's priorities with respect to the general public health and the health status of individuals eligible for assistance under the MediGrant plan.

"(3) The State's financial resources, the particular economic conditions in the State, and relative adequacy of the health care infrastructure in different regions of the State.

"(d) PERFORMANCE MEASURES.—To the extent practicable—

"(1) one or more performance goals shall be established by the State for each strategic objective identified in the MediGrant plan; and

"(2) the MediGrant plan shall describe, how program performance will be—

"(A) measured through objective, independently verifiable means, and

"(B) compared against performance goals, in order to determine the State's performance under this title.

"(e) PERIOD COVERED.—

"(1) STRATEGIC OBJECTIVES.—The strategic objectives shall cover a period of not less than 5 years and shall be updated and revised at least every 3 years.

"(2) PERFORMANCE GOALS.—The performance goals shall be established for dates that are not more than 3 years apart.

"SEC. 2102. ANNUAL REPORTS.

"(a) IN GENERAL.—In the case of a State with a MediGrant plan that is in effect for part or all of a fiscal year, no later than March 31 following such fiscal year (or March 31, 1998, in the case of fiscal year 1996) the State shall prepare and submit to the Secretary and the Congress a report on program activities and performance under this title for such fiscal year.

"(b) CONTENTS.—Each annual report under this section for a fiscal year shall include the following:

"(1) EXPENDITURE AND BENEFICIARY SUMMARY.—

"(A) INITIAL SUMMARY.—For the report for fiscal year 1997 (and, if applicable, fiscal year 1996), a summary of all expenditures under the MediGrant plan during the fiscal year (and during any portions of fiscal year 1996 during which the MediGrant plan was in effect under this title) as follows:

"(i) Aggregate medical assistance expenditures, disaggregated to the extent required to determine compliance with the set-aside requirements of subsections (a) through (d) of section 2112 and to compute the case mix index under section 2121(d)(3).

"(ii) For each general category of eligible individuals (specified in subsection (c)(1), aggregate medical assistance expenditures and the total and average number of eligible individuals under the MediGrant plan.

"(iii) By each general category of eligible individuals, total expenditures for each of the categories of health care items and services (specified in subsection (c)(2)) which are covered under the MediGrant plan and provided on a fee-for-service basis.

"(iv) By each general category of eligible individuals, total expenditures for payments to capitated health care organizations (as defined in section 2114(c)(1)).

"(v) Total administrative expenditures.

"(B) SUBSEQUENT SUMMARIES.—For reports for each succeeding fiscal year, a summary of—

"(i) all expenditures under the MediGrant plan, and

"(ii) the total and average number of eligible individuals under the MediGrant plan for each general category of eligible individuals.

"(2) UTILIZATION SUMMARY.—

"(A) INITIAL SUMMARY.—For the report for fiscal year 1997 (and, if applicable, fiscal year 1996), summary statistics on the utilization of health care services under the MediGrant plan during the year (and during any portions of fiscal year 1996 during which the MediGrant plan was in effect under this title) as follows:

"(i) For each general category of eligible individuals and for each of the categories of health care items and services which are covered under the MediGrant plan and provided on a fee-for-service basis, the number and percentage of persons who received such a type of service or item during the period covered by the report.

"(ii) Summary of health care utilization data reported to the State by capitated health care organizations.

"(B) SUBSEQUENT SUMMARIES.—For reports for each succeeding fiscal year, summary statistics on the utilization of health care services under the MediGrant plan.

"(3) ACHIEVEMENT OF PERFORMANCE GOALS.—With respect to each performance goal established under section 2101 and applicable to the year involved—

"(A) a brief description of the goal;

"(B) a description of the methods to be used to measure the attainment of such goal;

"(C) data on the actual performance with respect to the goal;

"(D) a review of the extent to which the goal was achieved, based on such data; and

"(E) if a performance goal has not been met—

"(i) why the goal was not met, and

"(ii) actions to be taken in response to such performance, including adjustments in performance goals or program activities for subsequent years.

"(4) PROGRAM EVALUATIONS.—A summary of the findings of evaluations under section 2103 completed during the fiscal year covered by the report.

"(5) FRAUD AND ABUSE AND QUALITY CONTROL ACTIVITIES.—A general description of the State's activities under part D to detect and deter fraud and abuse and to assure quality of services provided under the program.

"(6) PLAN ADMINISTRATION.—

"(A) A description of the administrative roles and responsibilities of entities in the State responsible for administration of this title.

"(B) Organizational charts for each entity in the State primarily responsible for activities under this title.

"(C) A brief description of each interstate compact (if any) the State has entered into with other States with respect to activities under this title.

"(D) General citations to the State statutes and administrative rules governing the State's activities under this title.

"(c) DESCRIPTION OF CATEGORIES.—In this section:

"(1) GENERAL CATEGORIES OF ELIGIBLE INDIVIDUALS.—Each of the following is a general category of eligible individuals:

"(A) Pregnant women.

"(B) Children.

"(C) Blind or disabled adults who are not elderly individuals.

"(D) Elderly individuals.

"(E) Other adults.

"(2) CATEGORIES OF HEALTH CARE ITEMS AND SERVICES.—The health care items and services described in each paragraph of section 2171(a) shall be considered a separate category of health care items and services.

"SEC. 2103. PERIODIC, INDEPENDENT EVALUATIONS.

"(a) IN GENERAL.—During fiscal year 1998 and every third fiscal year thereafter, each State shall provide for an evaluation of the operation of its MediGrant plan under this title.

"(b) INDEPENDENT.—Each such evaluation with respect to an activity under the MediGrant plan shall be conducted by an entity that is neither responsible under State law for the submission of the State MediGrant plan (or part thereof) nor responsible for administering (or supervising the administration of) the activity. If consistent with the previous sentence, such an entity may be a college or university, a State agency, a legislative branch agency in a State, or an independent contractor.

"(c) RESEARCH DESIGN.—Each such evaluation shall be conducted in accordance with a research design that is based on generally accepted models of survey design and sampling and statistical analysis.

"SEC. 2104. DESCRIPTION OF PROCESS FOR MEDIGRANT PLAN DEVELOPMENT.

"Each MediGrant plan shall include a description of the process under which the plan shall be developed and implemented in the State (consistent with section 2105).

"SEC. 2105. CONSULTATION IN MEDIGRANT PLAN DEVELOPMENT.

"(a) PUBLIC NOTICE PROCESS.—Before submitting a MediGrant plan or a plan amendment described in subsection (c) to the Secretary under part E, a State shall provide—

"(1) public notice respecting the submittal of the proposed plan or amendment, including a general description of the plan or amendment,

"(2) a means for the public to inspect or obtain a copy (at reasonable charge) of the proposed plan or amendment,

"(3) an opportunity for submittal and consideration of public comments on the proposed plan or amendment, and

"(4) for consultation with one or more advisory committees established and maintained by the State.

The previous sentence shall not apply to a revision of a MediGrant plan (or revision of an amendment to a plan) made by a State under section 2154(c)(1) or to a plan amendment withdrawal described in section 2154(c)(4).

"(b) CONTENTS OF NOTICE.—A notice under subsection (a)(1) for a proposed plan or amendment shall include a description of—

"(1) the general purpose of the proposed plan or amendment (including applicable effective dates),

"(2) where the public may inspect the proposed plan or amendment,

"(3) how the public may obtain a copy of the proposed plan or amendment and the applicable charge (if any) for the copy, and

"(4) how the public may submit comments on the proposed plan or amendment, including any deadlines applicable to consideration of such comments.

"(c) AMENDMENTS DESCRIBED.—An amendment to a MediGrant plan described in this subsection is an amendment which makes a material and substantial change in eligibility under the MediGrant plan or the benefits provided under the plan.

"(d) PUBLICATION.—Notices under this section may be published (as selected by the State) in one or more daily newspapers of general

circulation in the State or in any publication used by the State to publish State statutes or rules.

"(e) COMPARABLE PROCESS.—A separate notice, or notices, shall not be required under this section for a State if notice of the MediGrant plan or an amendment to the plan will be provided under a process specified in State law that is substantially equivalent to the notice process specified in this section.

"PART B—ELIGIBILITY, BENEFITS, AND SET-ASIDES

"SEC. 2111. ELIGIBILITY AND BENEFITS.

"(a) DESCRIPTION OF GENERAL ELIGIBILITY AND BENEFITS.—Each MediGrant plan shall include a description (consistent with this title) of the following:

"(1) GENERAL ELIGIBILITY STANDARDS.—The general eligibility standards of the plan for eligible low-income individuals (including individuals described in subsection (b)), including—

"(A) any limitations as to the duration of eligibility,

"(B) any eligibility standards relating to age, income and resources (including any standards relating to spenddowns and disposition of resources), residency, disability status, immigration status, or employment status of individuals,

"(C) methods of establishing and continuing eligibility and enrollment, including the methodology for computing family income,

"(D) the eligibility standards in the plan that protect the income and resources of a married individual who is living in the community and whose spouse is residing in an institution in order to prevent the impoverishment of the community spouse, and

"(E) any other standards relating to eligibility for medical assistance under the plan.

"(2) SCOPE OF ASSISTANCE.—The amount, duration, and scope of health care services and items covered under the plan, including differences among different eligible population groups.

"(3) DELIVERY METHOD.—The State's approach to delivery of medical assistance, including a general description of—

"(A) the use (or intended use) of vouchers, fee-for-service, or managed care arrangements (such as capitated health care plans, case management, and case coordination); and

"(B) utilization control systems.

"(4) FEE-FOR-SERVICE BENEFITS.—To the extent that medical assistance is furnished on a fee-for-service basis—

"(A) how the State determines the qualifications of health care providers eligible to provide such assistance; and

"(B) how the State determines rates of reimbursement for providing such assistance.

"(5) COST-SHARING.—Beneficiary cost-sharing (if any), including variations in such cost-sharing by population group or type of service and financial responsibilities of parents of recipients who are children and the spouses of recipients.

"(6) UTILIZATION INCENTIVES.—Incentives or requirements (if any) to encourage the appropriate utilization of services.

"(7) SUPPORT FOR CERTAIN HOSPITALS.—

"(A) IN GENERAL.—With respect to hospitals described in subparagraph (B) located in the State, a description of the extent to which provisions are made for expenditures for items and services furnished by such hospitals and covered under the MediGrant plan.

"(B) HOSPITALS DESCRIBED.—A hospital described in this subparagraph is a short-term acute care general hospital or a children's hospital, the low-income utilization rate of which exceeds the lesser of—

"(i) 1 standard deviation above the mean low-income utilization rate for hospitals receiving payments under a MediGrant plan in the State in which such hospital is located, or

"(ii) 1¼ standard deviations above the mean low-income utilization rate for hospitals receiving such payments in the 50 States and the District of Columbia.

"(C) LOW-INCOME UTILIZATION RATE.—For purposes of subparagraph (B), the term 'low-income utilization rate' means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of patient days attributable to patients who (for such days) were eligible for medical assistance under a MediGrant plan or were uninsured in a period, and the denominator of which is the total number of the hospital's patient days in that period.

"(D) PATIENT DAYS.—For purposes of subparagraph (C), the term 'patient day' includes each day in which—

"(i) an individual, including a newborn, is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere; or

"(ii) an individual makes one or more outpatient visits to the hospital.

"(b) MANDATORY COVERAGE.—Each MediGrant plan shall provide for making medical assistance available (subject to the eligibility standards described under the plan pursuant to subsection (a)(1) and State flexibility of benefits under section 2116) to—

"(1) any pregnant woman or child under the age of 13 whose family income does not exceed the poverty line applicable to a family of the size involved, and

"(2) any individual who is disabled, as defined by the State.

"(c) IMMUNIZATIONS FOR CHILDREN.—The MediGrant plan shall provide medical assistance for immunizations for children eligible for any medical assistance under the MediGrant plan, in accordance with a schedule for immunizations established by the Health Department of the State in consultation with the individuals and entities in the State responsible for the administration of the plan.

"(d) FAMILY PLANNING SERVICES.—The MediGrant plan shall provide prepregnancy planning services and supplies as specified by the State.

"(e) PREEXISTING CONDITION EXCLUSIONS.—Notwithstanding any other provision of this title—

"(1) a MediGrant plan may not deny or exclude coverage of any item or service for an eligible individual for benefits under the MediGrant plan for such item or service on the basis of a preexisting condition; and

"(2) if a State contracts or makes other arrangements (through the eligible individual or through another entity) with a capitated health care organization, insurer, or other entity, for the provision of items or services to eligible individuals under the MediGrant plan and the State permits such organization, insurer, or other entity to exclude coverage of a covered item or service on the basis of a preexisting condition, the State shall provide, through its MediGrant plan, for such coverage (through direct payment or otherwise) for any such covered item or service denied or excluded on the basis of a preexisting condition.

"(f) FAMILY RESPONSIBILITY.—A MediGrant plan may not require an adult child with a family income below the State median income (as determined by the State) applicable to a family of the size involved to contribute to the cost of covered nursing facility services and other long-term care services for the child's parent under the plan.

"(g) SOLVENCY STANDARDS FOR CAPITATED HEALTH CARE ORGANIZATIONS.—

"(1) IN GENERAL.—A State may not contract with a capitated health care organization, as defined in section 2114(c)(1), for the provision of medical assistance under a MediGrant plan under which the organization is—

"(A) at full financial risk, as defined by the State, unless the organization meets solvency standards established by the State for private health maintenance organizations, or

"(B) is not at such risk, unless the organization meets solvency standards that are established under the MediGrant plan.

"(2) TREATMENT OF PUBLIC ENTITIES.—Paragraph (1) shall not apply to an organization that is a public entity or if the solvency of such organization is guaranteed by the State.

"(3) TRANSITION.—In the case of a capitated health care organization that as of the date of the enactment of this title has entered into a contract with a State for the provision of medical assistance under title XIX under which the organization assumes full financial risk and is receiving capitation payments, paragraph (1) shall not apply to such organization until 3 years after the date of the enactment of this title.

"SEC. 2112. SET-ASIDES OF FUNDS.

"(a) FOR TARGETED LOW-INCOME FAMILIES.—

"(1) IN GENERAL.—Subject to subsection (f), a MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for targeted low-income families (as

defined in paragraph (3)) for a fiscal year shall be not less than the minimum low-income-family percentage specified in paragraph (2) of the total funds expended under the plan for all medical assistance for the fiscal year.

"(2) MINIMUM LOW-INCOME-FAMILY PERCENTAGE.—The minimum low-income-family percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which were attributable to expenditures for medical assistance for mandated benefits (as defined in subsection (h)) furnished to individuals—

"(A) who (at the time of furnishing the assistance) were under 65 years of age;

"(B) whose coverage (at such time) under a State plan under title XIX was required under Federal law; and

"(C) whose eligibility for such coverage (at such time) was not on a basis directly related to disability status, including being blind.

"(3) TARGETED LOW-INCOME FAMILY DEFINED.—In this subsection, the term 'targeted low-income family' means a family (which may be an individual)—

"(A) which includes a child or a pregnant woman; and

"(B) the income of which does not exceed 185 percent of the poverty line applicable to a family of the size involved.

"(b) FOR LOW-INCOME ELDERLY.—

"(1) SET-ASIDES.—Subject to subsection (f)—

"(A) GENERAL SET-ASIDE.—A MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for eligible low-income elderly individuals for a fiscal year shall be not less than the minimum low-income-elderly percentage specified in paragraph (2)(A) of the total funds expended under the plan for all medical assistance for the fiscal year.

"(B) SET-ASIDE FOR MEDICARE PREMIUM ASSISTANCE.—A MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for medicare cost-sharing described in section 2171(c)(1) for a fiscal year shall be not less than the minimum medicare premium assistance percentage specified in paragraph (2)(B) of the total funds expended under the plan for all medical assistance for the fiscal year. The MediGrant plan shall provide priority for such making such assistance available for targeted low-income elderly individuals (as defined in paragraph (3)).

"(2) MINIMUM PERCENTAGES.—

"(A) FOR GENERAL SET-ASIDE.—The minimum low-income-elderly percentage specified in this subparagraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

"(i) whose eligibility for such assistance was based on their being 65 years of age or older; and

"(ii)(I) whose coverage (at such time) under a State plan under title XIX was required under Federal law, or (II) who (at such time) were residents of a nursing facility.

"(B) FOR SET-ASIDE FOR MEDICARE PREMIUM ASSISTANCE.—The minimum medicare premium assistance percentage specified in this subparagraph for a State is equal to 90 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1993 through 1995 which was attributable to expenditures for medical assistance for medicare premiums described in section 1905(p)(3)(A) for individuals whose coverage (at such time) for such assistance for such premiums under a State plan under title XIX was required under Federal law.

"(3) TARGETED LOW-INCOME ELDERLY INDIVIDUAL DEFINED.—In this subsection, the term 'targeted low-income elderly individual' means an elderly individual whose family income does not exceed 100 percent of the poverty line applicable to a family of the size involved.

"(c) FOR LOW-INCOME DISABLED PERSONS.—

"(1) IN GENERAL.—Subject to subsection (f), a MediGrant plan shall provide that the percentage of funds expended under the plan for medical assistance for eligible low-income individuals who are not elderly individuals and who are eligible for such assistance on the basis of a disability, including being blind, for a fiscal year is not less than the minimum low-income-disabled percentage specified in paragraph (2) of the total funds expended under the plan for medical assistance for the fiscal year.

"(2) MINIMUM LOW-INCOME-DISABLED PERCENTAGE.—The minimum low-income-disabled percentage specified in this paragraph for a State is equal to 85 percent of the average percentage of the expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which was attributable to expenditures for medical assistance for mandated benefits furnished to individuals—

"(A) whose coverage (at such time) under a State plan under title XIX was required under Federal law; and

"(B) whose coverage (at such time) was on a basis directly related to disability status, including being blind.

"(d) FOR SERVICES PROVIDED AT FEDERALLY QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.—Subject to subsection (f), a MediGrant plan shall provide that the amount of funds expended under the plan for medical assistance for services provided at rural health clinics (as defined in section 1861(aa)(2)) and Federally-qualified health centers (as defined in section 1861(aa)(4)), for eligible low-income individuals for a fiscal year is not less than 85 percent of the average annual expenditures under title XIX for medical assistance in the State during Federal fiscal years 1992 through 1994 which were attributable to expenditures for

medical assistance for rural health clinic services and Federally-qualified health center services (as defined in section 1905(l)).

"(e) USE OF RESIDUAL FUNDS.—

"(1) IN GENERAL.—Subject to limitations on payment under section 2123, any funds not required to be expended under the set-asides under the previous subsections may be expended under the MediGrant plan for any of the following:

"(A) ADDITIONAL MEDICAL ASSISTANCE.—Medical assistance for eligible low-income individuals (as defined in section 2171(b)), in addition to any medical assistance made available under a previous subsection.

"(B) MEDICALLY-RELATED SERVICES.—Payment for medically-related services (as defined in paragraph (2)).

"(C) ADMINISTRATION.—Payment for the administration of the MediGrant plan.

"(2) MEDICALLY-RELATED SERVICES DEFINED.—In this title, the term 'medically-related services' means services reasonably related to, or in direct support of, the State's attainment of one or more of the strategic objectives and performance goals established under section 2101, but does not include items and services included on the list under section 2171(a) (relating to the definition of medical assistance).

"(f) EXCEPTIONS TO MINIMUM SET-ASIDES.—

"(1) ALTERNATIVE MINIMUM SET-ASIDES.—

"(A) IN GENERAL.—A State may provide in its MediGrant plan (through an amendment to the plan) for a lower percentage of expenditures than the minimum percentages specified in any (or all) of paragraphs (2) of subsections (a), (b), (c), and (d) if the State determines (and certifies to the Secretary) that—

"(i) the health care needs of the low-income populations described in paragraph (1) of the subsections (a), (b), (c), or (d) who are eligible for medical assistance under the plan during the previous fiscal year (or medicare premium assistance needs described in subsection (b)(1)(B)) can be reasonably met without the expenditure of the percentages otherwise required to be expended,

"(ii) the performance goals established under section 2101 relating to the respective population can reasonably be met with the expenditure of such lower percentage of funds, and

"(iii) in the case of subsection (d) with respect to rural health clinic services and Federally-qualified health center services, the health care needs of eligible low-income individuals residing in medically underserved rural areas can reasonably be met without the level of expenditure for such services otherwise required and the performance goals established under section 2101 relating to such individuals can reasonably be met with such lower level of expenditures.

"(B) PERIOD OF APPLICATION.—The determination and certification under subparagraph (A) shall be made for such period as a State may request, but may not be made

for a period of more than 3 consecutive Federal fiscal years (beginning with the first fiscal year for which the lower percentage is sought). A new determination and certification must be made under such clause for any subsequent period.

"(C) NO EXCEPTION PERMITTED BEFORE FISCAL YEAR 1998.—This paragraph may not apply with respect to the percentages described in paragraphs (2) of subsections (a), (b), and (c) for a fiscal year before fiscal year 1998.

"(2) INDEPENDENT CERTIFICATION OF COMPLIANCE WITH GOALS.—

"(A) IN GENERAL.—For purposes of section 2151(c), a MediGrant plan shall not be considered to be in substantial violation of the requirements of this section if the amount of actual State expenditures specified in any (or all) of paragraphs (1) of subsections (a), (b), (c), and (d) is lower than the minimum percentages specified in any (or all) of paragraphs (2) of such subsections if an independent actuary determines and certifies to the State that the MediGrant plan is reasonably designed to result in a level of expenditures which is consistent with the requirements of such subsections.

"(B) LIMIT ON VARIATION.—Subparagraph (A) shall not apply in the case of a MediGrant plan for which the actual State expenditures described in any (or all) of paragraphs (1) of subsections (a), (b), (c), and (d) are less than 95 percent of the expenditures which would be made if the amount of State expenditures specified in any (or all) of such paragraphs was equal to the applicable minimum percentage specified in any (or all) of paragraphs (2) of such subsections.

"(g) COMPUTATIONS.—States shall calculate the minimum percentages under paragraphs (2) of subsections (a), (b), (c), and (d) in a reasonable manner consistent with reports submitted to the Secretary for the fiscal years involved and medical assistance attributable to the exception provided under section 1903(v)(2) shall not be considered to be expenditures for medical assistance.

"(h) BENEFITS INCLUDED FOR PURPOSES OF COMPUTING SET-ASIDES.—In this section, the term 'mandated benefits'—

"(1) means medical assistance for items and services described in section 1905(a) to the extent such assistance with respect to such items and services was required to be provided under title XIX,

"(2) includes medical assistance for medicare cost-sharing only to the extent such assistance was required to be provided under section 1902(a)(10)(E), and

"(3) does not include medical assistance attributable to disproportionate share payment adjustments described in section 1923.

"SEC. 2113. PREMIUMS AND COST-SHARING.

"(a) IN GENERAL.—Subject to subsection (b), if any charges are imposed under the MediGrant plan for cost-sharing (as defined in subsection (d)), such cost-sharing shall be pursuant to a public cost-sharing schedule.

"(b) LIMITATION ON PREMIUM AND CERTAIN COST-SHARING FOR LOW-INCOME FAMILIES INCLUDING CHILDREN OR PREGNANT WOMEN.—

"(1) IN GENERAL.—In the case of a pregnant woman or a child who is a member of a family described in paragraph (2)—

"(A) the plan shall not impose any premium, and

"(B) the plan shall not (except as provided in subsection (c)(1)) impose any cost-sharing with respect to primary and preventive care services (as defined by the State) covered under the MediGrant plan for children or pregnant women unless such cost-sharing is nominal in nature.

"(2) FAMILY DESCRIBED.—A family described in this paragraph is a family (which may be an individual) which—

"(A) includes a child or a pregnant woman,

"(B) is made eligible for medical assistance under the MediGrant plan, and

"(C) the income of which does not exceed 100 percent of the poverty line applicable to a family of the size involved.

"(c) CERTAIN COST-SHARING PERMITTED.—Nothing in this section shall be construed as preventing a MediGrant plan (consistent with subsection (b))—

"(1) from imposing cost-sharing to discourage the inappropriate use of emergency medical services delivered through a hospital emergency room, a medical transportation provider, or otherwise,

"(2) from imposing premiums and cost-sharing differentially in order to encourage the use of primary and preventive care and discourage unnecessary or less economical care,

"(3) from scaling cost-sharing in a manner that reflects economic factors, employment status, and family size,

"(4) from scaling cost-sharing based on the availability to the individual or family of other health insurance coverage, or

"(5) from scaling cost-sharing based on participation in employment training programs, drug or alcohol abuse treatment, counseling programs, or other programs promoting personal responsibility.

"(d) COST-SHARING DEFINED.—In this section, the term 'cost-sharing' includes copayments, deductibles, coinsurance, and other charges for the provision of health care services.

"SEC. 2114. DESCRIPTION OF PROCESS FOR DEVELOPING CAPITATION PAYMENT RATES.

"(a) IN GENERAL.—If a State contracts (or intends to contract) with a capitated health care organization (as defined in subsection (c)(1)) under which the State makes a capitation payment (as defined in subsection (c)(2)) to the organization for providing or arranging for the provision of medical assistance under the MediGrant plan for a group of services, including at least inpatient hospital services and physicians' services, the plan shall include a description of the following:

"(1) USE OF ACTUARIAL SCIENCE.—The extent and manner in which the State uses actuarial science—

"(A) to analyze and project health care expenditures and utilization for individuals enrolled (or to be enrolled) in such an organization under the MediGrant plan, and

"(B) to develop capitation payment rates, including a brief description of the general methodologies used by actuaries.

"(2) QUALIFICATIONS OF ORGANIZATIONS.—The general qualifications, including any accreditation, State licensure or certification, or provider network standards, required by the State for participation of capitated health care organizations under the MediGrant plan.

"(3) DISSEMINATION PROCESS.—The process used by the State under subsection (b) and otherwise to disseminate, before entering into contracts with capitated health care organizations, actuarial information to such organizations on the historical fee-for-service costs (or, if not available, other recent financial data associated with providing covered services) and utilization associated with individuals described in paragraph (1)(A).

"(b) PUBLIC NOTICE AND COMMENT.—Under the MediGrant plan the State shall provide a process for providing, before the beginning of each contract year—

"(1) public notice of—

"(A) the amounts of the capitation payments (if any) made under the plan for the contract year preceding the public notice, and

"(B)(i) the information described under subsection (a)(1) with respect to capitation payments for the contract year involved, or (ii) amounts of the capitation payments the State expects to make for the contract year involved,

unless such information is designated as proprietary and not subject to public disclosure under State law, and

"(2) an opportunity for receiving public comment on the amounts and information for which notice is provided under paragraph (1).

"(c) DEFINITIONS.—In this title:

"(1) CAPITATED HEALTH CARE ORGANIZATION.—The term 'capitated health care organization' means a health maintenance organization or any other entity (including a health insuring organization, managed care organization, prepaid health plan, integrated service network, or similar entity) which under State law is permitted to accept capitation payments for providing (or arranging for the provision of) a group of items and services including at least inpatient hospital services and physicians' services.

"(2) CAPITATION PAYMENT.—The term 'capitation payment' means, with respect to payment, payment on a prepaid capitation basis or any other risk basis to an entity for the entity's provision (or arranging for the provision) of a group of items and services, including at least inpatient hospital services and physicians' services.

"SEC. 2115. PREVENTING SPOUSAL IMPOVERISHMENT.

"(a) SPECIAL TREATMENT FOR INSTITUTIONALIZED SPOUSES.—

"(1) SUPERSEDES OTHER PROVISIONS.—In determining the eligibility for medical assistance of an institutionalized spouse

(as defined in subsection (h)(1)), the provisions of this section supersede any other provision of this title which is inconsistent with them.

“(2) DOES NOT AFFECT CERTAIN DETERMINATIONS.—Except as this section specifically provides, this section does not apply to—

“(A) the determination of what constitutes income or resources, or

“(B) the methodology and standards for determining and evaluating income and resources.

“(3) NO APPLICATION IN COMMONWEALTHS AND TERRITORIES.—This section shall only apply to a State that is one of the 50 States or the District of Columbia.

“(b) RULES FOR TREATMENT OF INCOME.—

“(1) SEPARATE TREATMENT OF INCOME.—During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.

“(2) ATTRIBUTION OF INCOME.—In determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d), except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

“(A) NON-TRUST PROPERTY.—Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

“(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse,

“(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, ½ of the income shall be considered available to each of them, and

“(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse’s interest (or, if payment is made with respect to both spouses and no such interest is specified, ½ of the joint interest shall be considered available to each spouse).

“(B) TRUST PROPERTY.—In the case of a trust—

“(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this title; and

“(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

“(I) if payment of income is made solely to the institutionalized spouse or the community spouse,

the income shall be considered available only to that respective spouse,

"(II) if payment of income is made to both the institutionalized spouse and the community spouse, 1/2 of the income shall be considered available to each of them, and

"(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, 1/2 of the joint interest shall be considered available to each spouse).

"(C) PROPERTY WITH NO INSTRUMENT.—In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), 1/2 of the income shall be considered to be available to the institutionalized spouse and 1/2 to the community spouse.

"(D) REBUTTING OWNERSHIP.—The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

"(c) RULES FOR TREATMENT OF RESOURCES.—

"(1) COMPUTATION OF SPOUSAL SHARE AT TIME OF INSTITUTIONALIZATION.—

"(A) TOTAL JOINT RESOURCES.—There shall be computed (as of the beginning of the first continuous period of institutionalization of the institutionalized spouse)—

"(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

"(ii) a spousal share which is equal to 1/2 of such total value.

"(B) ASSESSMENT.—At the request of an institutionalized spouse or community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this title, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment. At the time of providing the copy of the assessment, the State shall include a notice indicating that the spouse will have a right to a fair hearing under subsection (e)(2).

"(2) ATTRIBUTION OF RESOURCES AT TIME OF INITIAL ELIGIBILITY DETERMINATION.—In determining the resources of an in-

stitutionalized spouse at the time of application for medical assistance under this title, regardless of any State laws relating to community property or the division of marital property—

"(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

"(B) resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds the amount computed under subsection (f)(2)(A) (as of the time of application for medical assistance).

"(3) ASSIGNMENT OF SUPPORT RIGHTS.—The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

"(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse,

"(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment, or

"(C) the State determines that denial of eligibility would work an undue hardship.

"(4) SEPARATE TREATMENT OF RESOURCES AFTER ELIGIBILITY FOR MEDICAL ASSISTANCE ESTABLISHED.—During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for medical assistance under this title, no resources of the community spouse shall be deemed available to the institutionalized spouse.

"(5) RESOURCES DEFINED.—In this section, the term 'resources' does not include—

"(A) resources excluded under subsection (a) or (d) of section 1613, and

"(B) resources that would be excluded under section 1613(a)(2)(A) but for the limitation on total value described in such section.

"(d) PROTECTING INCOME FOR COMMUNITY SPOUSE.—

"(1) ALLOWANCES TO BE OFFSET FROM INCOME OF INSTITUTIONALIZED SPOUSE.—After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

"(A) A personal needs allowance (described in paragraph (2)(A)), in an amount not less than the amount specified in paragraph (2)(C).

"(B) A community spouse monthly income allowance (as defined in paragraph (3)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

"(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (4)(A)(i) exceeds the amount of the monthly income of that family member.

"(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse as provided under paragraph (6).

In subparagraph (C), the term 'family member' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

"(2) PERSONAL NEEDS ALLOWANCE.—

"(A) IN GENERAL.—The MediGrant plan must provide that, in the case of an institutionalized individual or couple described in subparagraph (B), in determining the amount of the individual's or couple's income to be applied monthly to payment for the cost of care in an institution, there shall be deducted from the monthly income (in addition to other allowances otherwise provided under the plan) a monthly personal needs allowance—

"(i) which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in an institution, and

"(ii) which is not less (and may be greater) than the minimum monthly personal needs allowance described in subparagraph (C).

"(B) INSTITUTIONALIZED INDIVIDUAL OR COUPLE DEFINED.—In this paragraph, the term 'institutionalized individual or couple' means an individual or married couple—

"(i) who is an inpatient (or who are inpatients) in a medical institution or nursing facility for which payments are made under this title throughout a month, and

"(ii) who is or are determined to be eligible for medical assistance under the State MediGrant plan.

"(C) MINIMUM ALLOWANCE.—The minimum monthly personal needs allowance described in this subparagraph is $40 for an institutionalized individual and $80 for an institutionalized couple (if both are aged, blind, or disabled, and their incomes are considered available to each other in determining eligibility).

"(3) COMMUNITY SPOUSE MONTHLY INCOME ALLOWANCE DEFINED.—

"(A) IN GENERAL.—In this section (except as provided in subparagraph (B)), the community spouse monthly income allowance for a community spouse is an amount by which—

"(i) except as provided in subsection (e), the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (4)) for the spouse, exceeds

"(ii) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

"(B) COURT ORDERED SUPPORT.—If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

"(4) ESTABLISHMENT OF MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.—

"(A) IN GENERAL.—Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (B), is equal to or exceeds—

"(i) 150 percent of 1⁄12 of the poverty line applicable to a family unit of 2 members, plus

"(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

"(B) CAP ON MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.—The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g)).

"(5) EXCESS SHELTER ALLOWANCE DEFINED.—In paragraph (4)(A)(ii), the term 'excess shelter allowance' means, for a community spouse, the amount by which the sum of—

"(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

"(B) the standard utility allowance (used by the State under section 5(e) of the Food Stamp Act of 1977) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (4)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

"(6) TREATMENT OF INCURRED EXPENSES.—With respect to the post-eligibility treatment of income under this section, there shall be disregarded reparation payments made by the Federal Republic of Germany and, there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

"(A) medicare and other health insurance premiums, deductibles, or coinsurance, and

"(B) necessary medical or remedial care recognized under State law but not covered under the State MediGrant

plan under this title, subject to reasonable limits the State may establish on the amount of these expenses.

"(e) NOTICE AND HEARING.—

"(1) NOTICE.—Upon—

"(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

"(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B)), of the amount of any family allowances (described in subsection (d)(1)(C)), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f), and of the spouse's right to a hearing under the MediGrant plan respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

"(2) RESULTS OF HEARING.—

"(A) REVISION OF MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.—If either such spouse establishes in a hearing under this subsection that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A), an amount adequate to provide such additional income as is necessary.

"(B) REVISION OF COMMUNITY SPOUSE RESOURCE ALLOWANCE.—If either such spouse establishes in such a hearing that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2), an amount adequate to provide such a minimum monthly maintenance needs allowance.

"(f) PERMITTING TRANSFER OF RESOURCES TO COMMUNITY SPOUSE.—

"(1) IN GENERAL.—An institutionalized spouse may, without regard to any other provision of the MediGrant plan to the contrary, transfer an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to, or for the sole benefit of, the community spouse. The transfer under the preceding sentence shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (3).

"(2) COMMUNITY SPOUSE RESOURCE ALLOWANCE DEFINED.—In paragraph (1), the 'community spouse resource allowance' for a community spouse is an amount (if any) by which—

"(A) the greatest of—

"(i) $12,000 (subject to adjustment under subsection (g)), or, if greater (but not to exceed the amount specified in clause (ii)(II)) an amount specified under the State MediGrant plan,

"(ii) the lesser of (I) the spousal share computed under subsection (c)(1), or (II) $60,000 (subject to adjustment under subsection (g)), or

"(iii) the amount established under subsection (e)(2);

exceeds

"(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

"(g) INDEXING DOLLAR AMOUNTS.—For services furnished during a calendar year after 1989, the dollar amounts specified in subsections (d)(3)(C), (f)(2)(A)(i), and (f)(2)(A)(ii)(II) shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

"(h) DEFINITIONS.—In this section:

"(1) INSTITUTIONALIZED SPOUSE.—The term 'institutionalized spouse' means an individual—

"(A)(i) who is in a medical institution or nursing facility, or

"(ii) at the option of the State (I) who would be eligible under the MediGrant plan under this title if such individual was in a medical institution, (II) with respect to whom there has been a determination that but for the provision of home or community-based services such individual would require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the plan, and (III) who will receive home or community-based services pursuant the plan; and

"(B) is married to a spouse who is not in a medical institution or nursing facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

"(2) COMMUNITY SPOUSE.—The term 'community spouse' means the spouse of an institutionalized spouse.

"SEC. 2116. STATE FLEXIBILITY.

"(a) STATE FLEXIBILITY IN BENEFITS, PROVIDER PAYMENTS, GEOGRAPHICAL COVERAGE AREA, AND SELECTION OF PROVIDERS.—Nothing in this title (other than subsections (c) and (d) of section 2111) shall be construed as requiring a State—

"(1) to provide medical assistance for any particular items or services,

"(2) to provide for any payments with respect to any specific health care providers or any level of payments for any services,

"(3) to provide for the same medical assistance in all geographical areas or political subdivisions of the State, so long as medical assistance is made available in all such areas or subdivisions,

"(4) to provide that the medical assistance made available to any individual eligible for medical assistance must not be less in amount, duration, or scope than the medical assistance made available to any other such individual, or

"(5) to provide that any individual eligible for medical assistance with respect to an item or service may choose to obtain such assistance from any institution, agency, or person qualified to provide the item or service.

"(b) STATE FLEXIBILITY WITH RESPECT TO MANAGED CARE.—Nothing in this title shall be construed—

"(1) to limit a State's ability to contract with, on a capitated basis or otherwise, health care plans or individual health care providers for the provision or arrangement of medical assistance,

"(2) to limit a State's ability to contract with health care plans or other entities for case management services or for coordination of medical assistance, or

"(3) to restrict a State from establishing capitation rates on the basis of competition among health care plans or negotiations between the State and one or more health care plans.

"PART C—PAYMENTS TO STATES

"SEC. 2121. ALLOTMENT OF FUNDS AMONG STATES.

"(a) ALLOTMENTS.—

"(1) COMPUTATION.—The Secretary shall provide for the computation of State obligation and outlay allotments in accordance with this section for each fiscal year beginning with fiscal year 1996.

"(2) LIMITATION ON OBLIGATIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall not enter into obligations with any State under this title for a fiscal year in excess of the obligation allotment for that State for the fiscal year under paragraph (4). The sum of such obligation allotments for all States in any fiscal year (excluding amounts carried over under subparagraph (B) and excluding changes in allotments effected under paragraph (4)(D)) shall not exceed the aggregate limit on new obligation authority specified in paragraph (3) for that fiscal year.

"(B) ADJUSTMENTS.—

"(i) CARRYOVER OF ALLOTMENT PERMITTED.—If the amount of obligations entered into under this part with a State for quarters in a fiscal year is less than the amount of the obligation allotment under this section to the State for the fiscal year, the amount of the difference shall be added to the amount of the State obligation allotment otherwise provided under this section for the succeeding fiscal year. This clause shall be ap-

plied separately with respect to the portion of the obligation allotment that is attributable to the supplemental outlay allotment under subsection (f).

"(ii) REDUCTION FOR POST-ENACTMENT NEW OBLIGATIONS UNDER TITLE XIX IN FISCAL YEAR 1996.—The amount of the obligation allotment otherwise provided under this section for fiscal year 1996 for a State shall be reduced by the amount of the obligations entered into with respect to the State under section 1903(a) after the date of the enactment of this title.

"(C) NO EFFECT ON PRIOR YEAR OBLIGATIONS.—Subparagraph (A) shall not apply to or affect obligations for a fiscal year prior to fiscal year 1996.

"(D) OBLIGATION.—For purposes of this section, the Secretary's establishment of an estimate under section 2123(b) of the amount a State is entitled to receive for a quarter (taking into account any adjustments described in such subsection) shall be treated as the obligation of such amount for the State as of the first day of the quarter.

"(3) AGGREGATE LIMIT ON NEW OBLIGATION AUTHORITY.—

"(A) IN GENERAL.—For purposes of this subsection, subject to subparagraph (C), the 'aggregate limit on new obligation authority', for a fiscal year, is the pool amount under subsection (b) for the fiscal year, divided by the payout adjustment factor (described in subparagraph (B)) for the fiscal year.

"(B) PAYOUT ADJUSTMENT FACTOR.—For purposes of this subsection, the 'payout adjustment factor'—

"(i) for fiscal year 1996 is 0.950,

"(ii) for fiscal year 1997 is 0.986, and

"(iii) for a subsequent fiscal year is 0.998.

"(C) TRANSITIONAL ADJUSTMENT FOR PRE-ENACTMENT-OBLIGATION OUTLAYS.—In order to account for pre-enactment-obligation outlays described in paragraph (4)(C)(iv), in determining the aggregate limit on new obligation authority under subparagraph (A) for fiscal year 1996, the pool amount for such fiscal year is equal to—

"(i) the pool amount for such year, reduced by

"(ii) $24,624,000,000.

"(4) OBLIGATION ALLOTMENTS.—

"(A) GENERAL RULE FOR 50 STATES AND THE DISTRICT OF COLUMBIA.—Except as provided in this paragraph, the 'obligation allotment' for any of the 50 States or the District of Columbia for a fiscal year (beginning with fiscal year 1997) is an amount that bears the same ratio to the outlay allotment under subsection (c)(2) for such State or District (not taking into account any adjustment due to an election under paragraph (4)) for the fiscal year as the ratio of—

"(i) the aggregate limit on new obligation authority (less the total of the obligation allotments under subparagraph (B)) for the fiscal year, to

"(ii) the pool amount (less the sum of the outlay allotments for the territories) for such fiscal year.

"(B) TERRITORIES.—The obligation allotment for each of the Commonwealths and territories for a fiscal year is the outlay allotment for such Commonwealth or territory (as determined under subsection (c)(5)) for the fiscal year divided by the payout adjustment factor for the fiscal year (as defined in paragraph (3)(B)).

"(C) TRANSITIONAL RULE FOR FISCAL YEAR 1996.—

"(i) IN GENERAL.—The obligation amount for fiscal year 1996 for any State (including the District of Columbia, a Commonwealth, or territory) is determined according to the formula: A=(B-C)/D, where—

"(I) 'A' is the obligation amount for such State,

"(II) 'B' is the outlay allotment of such State for fiscal year 1996, as determined under subsection (c),

"(III) 'C' is the amount of the pre-enactment-obligation outlays (as established for such State under clause (ii)), and

"(IV) 'D' is the payout adjustment factor for such fiscal year (as defined in paragraph (3)(B)).

"(ii) PRE-ENACTMENT-OBLIGATION OUTLAY AMOUNTS.—Within 30 days after the date of the enactment of this title, the Secretary shall estimate (based on the best data available) and publish in the Federal Register the amount of the pre-enactment-obligation outlays (as defined in clause (iv)) for each State (including the District of Columbia, Commonwealths, and territories). The total of such amounts shall equal the dollar amount specified in paragraph (3)(C)(ii).

"(iii) AGREEMENT.—The submission of a MediGrant plan by a State under this title is deemed to constitute the State's acceptance of the obligation allotment limitations under this subsection, including the formula for computing the amount of such obligation allotment.

"(iv) PRE-ENACTMENT-OBLIGATION OUTLAYS DEFINED.—In this subsection, the term 'pre-enactment-obligation outlays' means, for a State, the outlays of the Federal Government that result from obligations that have been incurred under title XIX with respect to the State before the date of the enactment of this title, but for which payments to States have not been made as of such date of enactment.

"(D) ADJUSTMENT TO REFLECT ADOPTION OF ALTERNATIVE GROWTH FORMULA.—Any State that has elected an alternative growth formula under subsection (c)(4) which increases or decreases the dollar amount of an outlay allotment for a fiscal year is deemed to have increased or decreased, respectively, its obligation amount for such fiscal year by the amount of such increase or decrease.

"(E) TRANSITIONAL CORRECTION FOR FISCAL YEAR 1997.—

"(i) IN GENERAL.—The obligation amount for fiscal year 1997 for any State described in clause (ii) shall be

increased by 90 percent of the amount by which 90 percent of the amount described in clause (ii)(I) exceeds the amount described in clause (ii)(II), divided by the payout adjustment factor specified in paragraph (3)(B) for fiscal year 1996. The increase under this clause shall be paid to a State in the first quarter of fiscal year 1997.

"(ii) STATES DESCRIBED.—A State described in this clause is a State for which—

"(I) the amount of the pre-enactment-obligation outlays (as established for such State under subparagraph (C)(ii)), exceeded

"(II) the outlays of the Federal Government during fiscal year 1996 that are attributable to obligations that were incurred under title XIX with respect to the State before the date of the enactment of this title, but for which payments to States had not been made as of such date of enactment,

by at least 10 percent of the amount described in subclause (I).

"(b) POOL OF AVAILABLE FUNDS.—

"(1) IN GENERAL.—For purposes of this section, the 'pool amount' under this subsection for—

"(A) fiscal year 1996 is $96,386,037,894,

"(B) fiscal year 1997 is $103,233,603,164,

"(C) fiscal year 1998 is $107,907,625,827,

"(D) fiscal year 1999 is $112,644,040,408,

"(E) fiscal year 2000 is $117,359,685,046,

"(F) fiscal year 2001 is $122,284,072,525,

"(G) fiscal year 2002 is $127,418,239,580, and

"(H) each subsequent fiscal year is the pool amount under this paragraph for the previous fiscal year increased by the lesser of 4.2 percent or the annual percentage increase in the gross domestic product for the 12-month period ending in June before the beginning of that subsequent fiscal year.

"(2) NATIONAL MEDIGRANT GROWTH PERCENTAGE.—For purposes of this section for a fiscal year (beginning with fiscal year 1997), the 'national MediGrant growth percentage' is the percentage by which—

"(A) the pool amount under paragraph (1) for the fiscal year, exceeds

"(B) such pool amount for the previous fiscal year.

"(c) STATE OUTLAY ALLOTMENTS.—

"(1) FISCAL YEAR 1996.—

"(A) IN GENERAL.—For each of the 50 States and the District of Columbia, the amount of the State outlay allotment under this subsection for fiscal year 1996 is, subject to paragraph (4), determined in accordance with the following table:

"State or District:	***Outlay allotment (in dollars):***
Alabama	*1,517,652,207*
Alaska	*204,933,213*
Arizona	*1,370,781,297*

"State or District:	*Outlay allotment (in dollars):*
Arkansas	*1,011,457,933*
California	*8,946,838,461*
Colorado	*757,492,679*
Connecticut	*1,463,011,635*
Delaware	*212,327,763*
District of Columbia	*501,412,091*
Florida	*3,715,624,180*
Georgia	*2,426,320,602*
Hawaii	*323,124,375*
Idaho	*278,329,686*
Illinois	*3,467,274,342*
Indiana	*1,952,467,267*
Iowa	*835,235,895*
Kansas	*713,700,869*
Kentucky	*1,577,828,832*
Louisiana	*2,622,000,000*
Maine	*694,220,790*
Maryland	*1,369,699,847*
Massachusetts	*2,870,346,862*
Michigan	*3,465,182,886*
Minnesota	*1,793,776,356*
Mississippi	*1,261,781,330*
Missouri	*1,849,248,945*
Montana	*312,212,472*
Nebraska	*463,900,417*
Nevada	*257,896,453*
New Hampshire	*360,000,000*
New Jersey	*2,854,621,241*
New Mexico	*634,756,945*
New York	*12,901,793,038*
North Carolina	*2,587,883,809*
North Dakota	*241,168,563*
Ohio	*4,034,049,690*
Oklahoma	*911,198,775*
Oregon	*1,088,670,440*
Pennsylvania	*4,454,423,400*
Rhode Island	*545,686,262*
South Carolina	*1,621,021,815*
South Dakota	*262,804,959*
Tennessee	*2,519,934,251*
Texas	*6,351,909,343*
Utah	*484,274,254*
Vermont	*248,158,729*
Virginia	*1,144,962,509*
Washington	*1,763,460,996*
West Virginia	*1,156,813,157*
Wisconsin	*1,709,500,642*
Wyoming	*132,925,390.*

"(2) COMPUTATION OF STATE OUTLAY ALLOTMENTS.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, the amount of the State outlay allotment under this subsection for one of the 50 States and the District of Columbia for a fiscal year (beginning with fiscal year 1997) is equal to the product of—

"(i) the needs-based amount determined under subparagraph (B) for such State or District for the fiscal year, and

"(ii) the scalar factor described in subparagraph (C) for the fiscal year.

"(B) NEEDS-BASED AMOUNT.—The needs-based amount under this subparagraph for a State or the District of Columbia for a fiscal year is equal to the product of—

"(i) the State's or District's aggregate expenditure need for the fiscal year (as determined under subsection (d)), and

"(ii) the State's or District's old Federal medical assistance percentage (as defined in section 2122(d)) for the fiscal year (or, in the case of fiscal year 1997, the Federal medical assistance percentage determined under section 1905(b) for fiscal year 1996).

"(C) SCALAR FACTOR.—The scalar factor under this subparagraph for a fiscal year is such proportion so that, when it is applied under subparagraph (A)(ii) for the fiscal year (taking into account the floors and ceilings under paragraph (3)), the total of the outlay allotments under this subsection for all the 50 States and the District of Columbia for the fiscal year (not taking into account any increase in an outlay allotment for a fiscal year attributable to the election of an alternative growth formula under paragraph (4)) is equal to the amount by which (i) the pool amount for the fiscal year (as determined under subsection (b)), exceeds (ii) the sum of the outlay allotments provided under paragraph (5) for the Commonwealths and territories for the fiscal year.

"(3) FLOORS AND CEILINGS.—

"(A) FLOORS.—Subject to the ceiling established under subparagraph (B), in no case shall the amount of the State outlay allotment under paragraph (2) for a fiscal year be less than the greatest of the following:

"(i) IN GENERAL.—Beginning with fiscal year 1998, 0.24 percent of the pool amount for the fiscal year.

"(ii) FLOOR BASED ON PREVIOUS YEAR'S OUTLAY ALLOTMENT.—Subject to clause (iii)—

"(I) FISCAL YEAR 1997.—For fiscal year 1997, 103.5 percent of the amount of the State outlay allotment under this subsection for fiscal year 1996.

"(II) FISCAL YEAR 1998.—For fiscal year 1998, 103 percent of the amount of the State outlay allotment under this subsection for fiscal year 1997.

"(III) SUBSEQUENT FISCAL YEARS.—For a fiscal year after 1998, 102 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year.

"(iii) FLOOR BASED ON OUTLAY ALLOTMENT GROWTH RATE IN FIRST YEAR.—Beginning with fiscal year 1998, in the case of a State for which the outlay allotment under this subsection for fiscal year 1997 exceeded its outlay allotment under this subsection for the previous fiscal year by more than the national MediGrant growth percentage for fiscal year 1997, 104 percent of the amount of the State outlay allotment under this subsection for the previous fiscal year (or, if less, beginning with fiscal year 2003, 95 percent of the national MediGrant growth percentage for the year).

"(B) CEILINGS.—

"(i) IN GENERAL.—Subject to clause (ii), in no case shall the amount of the State outlay allotment under paragraph (2) for a fiscal year be greater than the product of—

"(I) the State outlay allotment under this subsection for the State for the preceding fiscal year, and

"(II) the applicable percent (specified in clause (ii) or (iii)) for the fiscal year involved.

"(ii) GENERAL RULE FOR APPLICABLE PERCENT.—For purposes of clause (i), subject to clause (iii), the 'applicable percent'—

"(I) for fiscal year 1997 is 109 percent, and

"(II) for a subsequent fiscal year is 105.33 percent.

"(iii) SPECIAL RULE.—For a fiscal year after fiscal year 1997, in the case of a State (among the 50 States and the District of Columbia) that is one of the 10 States with the lowest Federal MediGrant spending per resident-in-poverty rates (as determined under clause (iv)) for the fiscal year, the 'applicable percent' is 107 percent.

"(iv) DETERMINATION OF FEDERAL MEDIGRANT SPENDING PER RESIDENT-IN-POVERTY RATE.—For purposes of clause (iii), the 'Federal MediGrant spending per resident-in-poverty rate' for a State for a fiscal year is equal to—

"(I) the State's outlay allotment under this subsection for the previous fiscal year (determined without regard to paragraph (4)), divided by

"(II) the average annual number of residents of the State in poverty (as defined in subsection (d)(2)) with respect to the fiscal year.

"(C) SPECIAL RULE.—

"(i) IN GENERAL.—Notwithstanding the preceding subparagraphs of this paragraph, the State outlay allotment for—

"(I) New Hampshire for each of the fiscal years 1997 through 2000, is $360,000,000,

"(II) Louisiana, subject to subclause (III), for each of the fiscal years 1997 through 2000, is $2,622,000,000, and

"(III) Louisiana and Nebraska for fiscal year 1997, as otherwise determined, shall be increased by $37,048,207 and $106,132,408, respectively.

"(IV) Nevada for each of fiscal years 1996, 1997, and 1998, as otherwise determined, shall be increased by $90,000,000.

"(ii) EXCEPTION.—A State described in subclause (I) or (II) of clause (i) may apply to the Secretary for use of the State outlay allotment otherwise determined under this subsection for any fiscal year, if such State notifies the Secretary not later than March 1 preceding such fiscal year that such State will be able to expend

sufficient State funds in such fiscal year to qualify for such allotment.

"(iii) TREATMENT OF INCREASE AS SUPPLEMENTAL ALLOTMENT.—Any increase in an outlay allotment under clause (i)(III) or (i)(IV) shall not be taken into account for purposes of determining the scalar factor under paragraph (2) for fiscal year 1997, any State outlay allotment for a fiscal year after fiscal year 1997, the pool amount for a fiscal year after fiscal year 1997, or determination of the national MediGrant growth percentage for any fiscal year.

"(4) ELECTION OF ALTERNATIVE GROWTH FORMULA.—

"(A) ELECTION.—In order to reduce variations in increases in outlay allotments over time, any of the 50 States or the District of Columbia may elect (by notice provided to the Secretary by not later than April 1, 1996) to adopt an alternative growth rate formula under this paragraph for the determination of the State's outlay allotment in fiscal year 1996 and for the increase in the amount of such allotment in subsequent fiscal years.

"(B) FORMULA.—The alternative growth formula under this paragraph may be any formula under which a portion of the State outlay allotment for fiscal year 1996 under paragraph (1) is deferred and applied to increase the amount of its outlay allotment for one or more subsequent fiscal years, so long as the total amount of such increases for all such subsequent fiscal years does not exceed the amount of the outlay allotment deferred from fiscal year 1996.

"(5) COMMONWEALTHS AND TERRITORIES.—

"(A) IN GENERAL.—The outlay allotment for each of the Commonwealths and territories for a fiscal year is the maximum amount that could have been certified under section 1108(c) (as in effect on the day before the date of the enactment of this title) with respect to the Commonwealth or territory for the fiscal year with respect to title XIX, if the national MediGrant growth percentage (as determined under subsection (b)(2)) for the fiscal year had been substituted (beginning with fiscal year 1997) for the percentage increase referred to in section 1108(c)(1)(B) (as so in effect).

"(B) DISREGARD OF ROUNDING REQUIREMENTS.—For purposes of subparagraph (A), the rounding requirements under section 1108(c) shall not apply.

"(C) LIMITATION ON TOTAL AMOUNT FOR FISCAL YEAR 1996.—Notwithstanding the provisions of subparagraph (A), the total amount of the outlay allotments for the Commonwealths and territories for fiscal year 1996 may not exceed $139,950,000.

"(d) STATE AGGREGATE EXPENDITURE NEED DETERMINED.—

"(1) IN GENERAL.—For purposes of subsection (c), the 'State aggregate expenditure need' for a State or the District of Columbia for a fiscal year is equal to the product of the following 4 factors:

"(A) RESIDENTS IN POVERTY.—The average annual number of residents in poverty of such State or District with respect to the fiscal year (as determined under paragraph (2)).

"(B) CASE MIX INDEX.—The case mix index for such State or District (as determined under paragraph (3)) for the most recent fiscal year for which data are available, but in no case less than 0.9 or greater than 1.15.

"(C) INPUT COST INDEX.—The input cost index for the State (as determined under paragraph (4)) for the most recent fiscal year for which data are available.

"(D) NATIONAL AVERAGE SPENDING PER RESIDENT IN POVERTY.—The national average spending per resident in poverty (as determined under paragraph (5)).

"(2) RESIDENTS IN POVERTY.—In this section—

"(A) IN GENERAL.—The term 'average annual number of residents in poverty' means, with respect to a State or the District of Columbia and a fiscal year, the average annual number of residents in poverty (as defined in subparagraph (B)) in such State or District (based on data made generally available by the Bureau of the Census from the Current Population Survey) for the most recent 3-calendar-year period (ending before the fiscal year) for which such data are available.

"(B) RESIDENT IN POVERTY DEFINED.—The term 'resident in poverty' means an individual whose family income does not exceed the poverty threshold (as such terms are defined by the Office of Management and Budget and are generally interpreted and applied by the Bureau of the Census for the year involved).

"(3) CASE MIX INDEX.—

"(A) IN GENERAL.—In this subsection, the 'case mix index' for a State or the District of Columbia for a fiscal year is equal to—

"(i) the sum of—

"(I) the projected per recipient expenditures with respect to elderly individuals in such State or District for the fiscal year (determined under subparagraph (B)),

"(II) the projected per recipient expenditures with respect to the blind and disabled individuals in such State or District for the fiscal year (determined under subparagraph (C)), and

"(III) the projected per recipient expenditures with respect to other individuals in such State or District (determined under subparagraph (D));

divided by—

"(ii) the national average spending per recipient determined under subparagraph (E) for the fiscal year involved.

"(B) PROJECTED PER RECIPIENT EXPENDITURES FOR THE ELDERLY.—For purposes of subparagraph (A)(i)(I), the 'projected per recipient expenditures with respect to elderly in-

dividuals' in a State or the District of Columbia for a fiscal year is equal to the product of—

"(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for elderly individuals, and

"(ii) the proportion, of all individuals who received medical assistance under this title in such State or District in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

"(C) PROJECTED PER RECIPIENT EXPENDITURES FOR THE BLIND AND DISABLED.—For purposes of subparagraph (A)(i)(II), the 'projected per recipient expenditures with respect to blind and disabled individuals' in a State or the District of Columbia for a fiscal year is equal to the product of—

"(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are eligible for medical assistance because such individuals are blind or disabled and are not elderly individuals, and

"(ii) the proportion, of all individuals who received medical assistance under this title in the State in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

"(D) PROJECTED PER RECIPIENT EXPENDITURES FOR OTHER INDIVIDUALS.—For purposes of subparagraph (A)(i)(III), the 'projected per recipient expenditures with respect to other individuals' in a State or the District of Columbia for a fiscal year is equal to the product of—

"(i) the national average per recipient expenditures under this title in the 50 States and the District of Columbia for the most recent fiscal year for which data are available for individuals who are not described in subparagraph (B)(i) or (C)(i), and

"(ii) the proportion, of all individuals who received medical assistance under this title in such State or District in the most recent fiscal year referred to in clause (i), that were individuals described in such clause.

"(E) NATIONAL AVERAGE SPENDING PER RECIPIENT.—For purposes of this paragraph, the 'national average expenditures per recipient' for a fiscal year is equal to the sum of—

"(i) the product of (I) the national average described in subparagraph (B)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph,

"(ii) the product of (I) the national average described in subparagraph (C)(i), and (II) the proportion,

of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph, and

"(iii) the product of (I) the national average described in subparagraph (D)(i), and (II) the proportion, of all individuals who received medical assistance under this title in any of the 50 States or the District of Columbia in the fiscal year referred to in such subparagraph, who are described in such subparagraph.

"(F) DETERMINATION OF NATIONAL AVERAGES AND PROPORTIONS.—

"(i) IN GENERAL.—The national averages per recipient and the proportions referred to in clauses (i) and (ii), respectively, of subparagraphs (B), (C), and (D) and subparagraph (E) shall be determined by the Secretary using the most recent data available.

"(ii) USE OF MEDICAID DATA.—If for a fiscal year there is inadequate data to compute such averages and proportions based on expenditures and numbers of individuals receiving medical assistance under this title, the Secretary may compute such averages based on expenditures and numbers of such individuals under title XIX for the most recent fiscal year for which data are available and, for this purpose—

"(I) any reference in subparagraph (B)(i) to 'elderly individuals' is deemed a reference to 'individuals whose eligibility for medical assistance is based on being 65 years of age or older',

"(II) the reference in subparagraph (C)(i) to 'and are not elderly individuals' shall be considered to be deleted, and

"(III) individuals whose basis for eligibility for medical assistance was reported as unknown shall not be counted as individuals under subparagraph (D)(i).

"(iii) EXPENDITURE DEFINED.—For purposes of this paragraph, the term 'expenditure' means medical vendor payments by basis of eligibility as reported by HCFA Form 2082.

"(4) INPUT COST INDEX.—

"(A) IN GENERAL.—In this section, the 'input cost index' for a State or the District of Columbia for a fiscal year is the sum of—

"(i) 0.15, and

"(ii) 0.85 multiplied by the ratio of (I) the annual average wages for hospital employees in such State or District for the fiscal year (as determined under subparagraph (B)), to (II) the annual average wages for hospital employees in the 50 States and the District of Columbia for such year (as determined under such subparagraph).

"(B) DETERMINATION OF ANNUAL AVERAGE WAGES OF HOSPITAL EMPLOYEES.—The Secretary shall provide for the determination of annual average wages for hospital employees in a State or the District of Columbia and, collectively, in the 50 States and the District of Columbia for a fiscal year based on the area wage data applicable to hospitals under section 1886(d)(2)(E) (or, if such data no longer exists, comparable data of hospital wages) for discharges occurring during the fiscal year involved.

"(5) NATIONAL AVERAGE SPENDING PER RESIDENT IN POVERTY.—For purposes of this subsection, the 'national average spending per resident in poverty'—

"(A) for fiscal year 1997 is equal to—

"(i) the sum (for each of the 50 States and the District of Columbia) of the total of the Federal and State expenditures under title XIX for calendar quarters in fiscal year 1994, increased by the percentage by which (I) the pool amount for fiscal year 1997, exceeds (II) $83,213,431,458 (which represents Federal medicaid expenditures for such States and District for fiscal year 1994); divided by

"(ii) the sum of the number of residents in poverty (as defined in paragraph (2)(A)) for all of the 50 States and the District of Columbia for fiscal year 1994; and

"(B) for a succeeding fiscal year is equal to the national average spending per resident in poverty under this paragraph for the preceding fiscal year increased by the national MediGrant growth percentage (as defined in subsection (b)(2)) for the fiscal year involved.

"(e) PUBLICATION OF OBLIGATION AND OUTLAY ALLOTMENTS.—

"(1) NOTICE OF PRELIMINARY ALLOTMENTS.—Not later than April 1 before the beginning of each fiscal year (beginning with fiscal year 1997), the Secretary shall initially compute, after consultation with the Comptroller General, and publish in the Federal Register notice of the proposed obligation and outlay allotments for each State under this section (not taking into account subsection (a)(2)(B)) for the fiscal year. The Secretary shall include in the notice a description of the methodology and data used in deriving such allotments for the year.

"(2) REVIEW BY GAO.—The Comptroller General shall submit to Congress by not later than May 15 of each such fiscal year, a report analyzing such allotments and the extent to which they comply with the precise requirements of this section.

"(3) NOTICE OF FINAL ALLOTMENTS.—Not later than July 1 before the beginning of each such fiscal year, the Secretary, taking into consideration the analysis contained in the report of the Comptroller General under paragraph (2), shall compute and publish in the Federal Register notice of the final allotments under this section (both taking into account and not taking into account subsection (a)(2)(B)) for the fiscal year. The Secretary shall include in the notice a description of any changes in such allotments from the initial allotments published under paragraph (1) for the fiscal year and the reasons

for such changes. Once published under this paragraph, the Secretary is not authorized to change such allotments.

"(4) GAO REPORT ON FINAL ALLOTMENTS.—The Comptroller General shall submit to Congress by not later than August 1 of each such fiscal year, a report analyzing the final allotments under paragraph (3) and the extent to which they comply with the precise requirements of this section.

"(f) SUPPLEMENTAL ALLOTMENT FOR EMERGENCY HEALTH CARE SERVICES TO CERTAIN ALIENS.—

"(1) IN GENERAL.—Notwithstanding the previous provisions of this section, the amount of the State outlay allotment for each of fiscal years 1996 through 2000 for each supplemental allotment eligible State shall be increased by the amount of the supplemental outlay allotment provided under paragraph (2) for the State for that year. The amount of such increased allotment may only be used for the purpose of providing medical assistance for care and services for aliens described in paragraph (1) of section 2123(e) and for which the exception described in paragraph (2) of such section applies. Section 2122(f)(3) shall apply to such assistance in the same manner as it applies to medical assistance described in such section.

"(2) SUPPLEMENTAL OUTLAY ALLOTMENT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the amount of the supplemental outlay allotment for a supplemental allotment eligible State for a fiscal year is equal to the supplemental allotment ratio (as defined in subparagraph (C)) multiplied by the supplemental pool amount (specified in subparagraph (D)) for the fiscal year.

"(B) SUPPLEMENTAL ALLOTMENT ELIGIBLE STATE.—In this subsection, the term 'supplemental allotment eligible State' means one of the 15 States with the highest number of undocumented alien residents of all the States.

"(C) SUPPLEMENTAL ALLOTMENT RATIO.—In this paragraph, the 'supplemental allotment ratio' for a State is the ratio of—

"(i) the number of undocumented aliens residing in the State, to

"(ii) the sum of such numbers for all supplemental allotment eligible States.

"(D) SUPPLEMENTAL POOL AMOUNT.—In this paragraph, the 'supplemental pool amount'—

"(i) for fiscal year 1996 is $627,325,551,

"(ii) for fiscal year 1997 is $673,388,855,

"(iii) for fiscal year 1998 is $702,313,450,

"(iv) for fiscal year 1999 is $733,140,258, and

"(v) for fiscal year 2000 is $763,831,886.

"(E) DETERMINATION OF NUMBER.—

"(i) IN GENERAL.—The number of undocumented aliens residing in a State under this paragraph—

"(I) for fiscal year 1996 shall be determined based on estimates of the resident illegal alien population residing in each State prepared by the Statistics Division of the Immigration and Naturalization Service as of October 1992, and

"(II) for a subsequent fiscal year shall be determined based on the most recent updated estimate made under clause (ii).

"(ii) UPDATING ESTIMATE.—For each fiscal year beginning with fiscal year 1997, the Secretary, in consultation with the Commission of the Immigration and Naturalization Service, States, and outside experts, shall estimate the number of undocumented aliens residing in each of the 50 States and the District of Columbia.

"(3) TREATMENT FOR OBLIGATION PURPOSES.—For purposes of computing obligation allotments under subsection (a)—

"(A) the amount of the supplemental pool amount for a fiscal year shall be added to the pool amount under subsection (b) for that fiscal year, and

"(B) the amount of the supplemental allotment to a State provided under paragraph (1) shall be added to the outlay allotment of the State for that fiscal year.

"(4) SEQUENCE OF OBLIGATIONS.—For purposes of carrying out this title, payments to a supplemental allotment eligible State under section 2122 that are attributable to expenditures for medical assistance described in the second sentence of paragraph (1) shall first be counted toward the supplemental outlay allotment provided under this subsection, rather than toward the outlay allotment otherwise provided under this section.

"SEC. 2122. PAYMENTS TO STATES.

"(a) AMOUNT OF PAYMENT.—From the allotment of a State under section 2121 for a fiscal year, subject to the succeeding provisions of this title, the Secretary shall pay to each State which has a MediGrant plan approved under part E, for each quarter in the fiscal year—

"(1) an amount equal to the applicable Federal medical assistance percentage (as defined in subsection (c)) of the total amount expended during such quarter as medical assistance under the plan; plus

"(2) an amount equal to the applicable Federal medical assistance percentage of the total amount expended during such quarter for medically-related services (as defined in section 2112(e)(2)); plus

"(3) subject to section 2123(c)—

"(A) an amount equal to 90 percent of the amounts expended during such quarter for the design, development, and installation of information systems and for providing incentives to promote the enforcement of medical support orders, plus

"(B) an amount equal to 75 percent of the amounts expended during such quarter for medical personnel, administrative support of medical personnel, operation and maintenance of information systems, modification of information systems, quality assurance activities, utilization review, medical and peer review, anti-fraud activities, independent evaluations, coordination of benefits, and meeting reporting requirements under this title, plus

"(C) an amount equal to 50 percent of so much of the remainder of the amounts expended during such quarter as are expended by the State in the administration of the State MediGrant plan.

"(b) PAYMENT PROCESS.—

"(1) QUARTERLY ESTIMATES.—Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

"(2) PAYMENT.—

"(A) IN GENERAL.—The Secretary shall then pay to the State, in such installments as the Secretary may determine and in accordance with section 6503(a) of title 31, United States Code, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section (or section 1903) to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection (or under section 1903(d)).

"(B) TREATMENT AS OVERPAYMENTS.—Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 2135.

"(C) RECOVERY OF OVERPAYMENTS.—For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

"(D) NO ADJUSTMENT FOR UNCOLLECTABLES.—In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

"(3) FEDERAL SHARE OF RECOVERIES.—The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State MediGrant plan shall be considered an overpayment to be adjusted under this subsection.

"(4) TIMING OF OBLIGATION OF FUNDS.—Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

"(5) DISALLOWANCES.—In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1116(d), and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this title, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.

"(c) APPLICABLE FEDERAL MEDICAL ASSISTANCE PERCENTAGE DEFINED.—In this section, except as provided in subsection (f), the term 'applicable Federal medical assistance percentage' means, with respect to one of the 50 States or the District of Columbia, at the State's or District's option—

"(1) the old Federal medical assistance percentage (as determined in subsection (d));

"(2) the lesser of—

"(A) new Federal medical assistance percentage (as determined under subsection (e)) or

"(B) the old Federal medical assistance percentage plus 10 percentage points; or

"(3) 60 percent.

"(d) OLD FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (f), the term 'old Federal medical assistance percentage' for any State is 100 percent less the State percentage; and the State percentage is that percentage which bears the same ratio to 45 percent as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii.

"(2) LIMITATION ON RANGE.—In no case shall the old Federal medical assistance percentage be less than 50 percent or more than 83 percent.

"(3) PROMULGATION.—The old Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1101(a)(8)(B).

"(e) NEW FEDERAL MEDICAL ASSISTANCE PERCENTAGE DEFINED.—

"(1) IN GENERAL.—

"(A) TERM DEFINED.—Except as provided in paragraph (3) and subsection (f), the term 'new Federal medical assistance percentage' means, for each of the 50 States and the District of Columbia, 100 percent reduced by the product 0.39 and the ratio of—

"(i)(I) for each of the 50 States, the total taxable resources (TTR) ratio of the State specified in subparagraph (B), or

"(II) for the District of Columbia, the per capita income ratio specified in subparagraph (C),

to—

"(ii) the aggregate expenditure need ratio of the State or District, as described in subparagraph (D).

"(B) TOTAL TAXABLE RESOURCES (TTR) RATIO.—For purposes of subparagraph (A)(i)(I), the total taxable resources (TTR) ratio for each of the 50 States is—

"(i) an amount equal to the most recent 3-year average of the total taxable resources (TTR) of the State, as determined by the Secretary of the Treasury, divided by

"(ii) an amount equal to the sum of the 3-year averages determined under clause (i) for each of the 50 States.

"(C) PER CAPITA INCOME RATIO.—For purposes of subparagraph (A)(i)(II), the per capita income ratio of the District of Columbia is—

"(i) an amount equal to the most recent 3-year average of the total personal income of the District of Columbia, as determined in accordance with the provisions of section 1101(a)(8)(B), divided by

"(ii) an amount equal to the total personal income of the continental United States (including Alaska) and Hawaii, as determined under section 1101(a)(8)(B).

"(D) AGGREGATE EXPENDITURE NEED RATIO.—For purposes of subparagraph (A), with respect to each of the 50 States and the District of Columbia for a fiscal year, the aggregate expenditure need ratio is—

"(i) the State aggregate expenditure need (as defined in section 2121(d)) for the State for the fiscal year, divided by

"(ii) the such of such State aggregate expenditure needs for the 50 States and the District of Columbia for the fiscal year.

"(2) LIMITATION ON RANGE.—Except as provided in subsection (f), the new Federal medical assistance percentage shall in no case be less than 40 percent or greater than 83 percent.

"(3) PROMULGATION.—The new Federal medical assistance percentage for any State shall be promulgated in a timely man-

ner consistent with the promulgation of the old Federal medical assistance percentage under section 1101(a)(8)(B).

"(f) SPECIAL RULES.—For purposes of this title—

"(1) COMMONWEALTHS AND TERRITORIES.—In the case of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, the old and new Federal medical assistance percentages are 50 percent.

"(2) ALASKA.—In the case of Alaska, the old Federal medical assistance percentage is that percentage which bears the same ratio to 45 percent as the square of the adjusted per capita income of such State bears to the square of the per capita income of the continental United States. For purposes of the preceding sentence, the adjusted per capita income for Alaska shall be determined by dividing the State's most recent 3-year average per capita by the input cost index for such State (as determined under section 2121(d)(4)).

"(3) INDIAN HEALTH SERVICE FACILITIES.—

"(A) IN GENERAL.—The old and new Federal medical assistance percentages shall be 100 percent with respect to the amounts expended as medical assistance for services which are received through a facility described in subparagraph (B) of an Indian tribe or tribal organization or through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act).

"(B) FACILITY DESCRIBED.—For purposes of subparagraph (A), a facility described in this subparagraph is a facility of an Indian tribe if—

"(i) the facility is located in a State which, as of the date of the enactment of this title, was not operating its State plan under title XIX pursuant to a Statewide waiver approved under section 1115,

"(ii) the facility is not an Indian Health Service facility,

"(iii) the tribe owns at least 2 such facilities, and

"(iv) the tribe has at least 50,000 members (as of the date of the enactment of this title).

"(4) NO STATE MATCHING REQUIRED FOR CERTAIN EXPENDITURES.—In applying subsection (a)(1) with respect to medical assistance provided to unlawful aliens pursuant to the exception specified in section 2123(f)(2), payment shall be made for the amount of such assistance without regard to any need for a State match.

"(5) SPECIAL TRANSITIONAL RULE.—

"(A) IN GENERAL.—Notwithstanding subsections (a) and (f), in order to receive the full State outlay allotment described in section 2121(c)(3)(C)(i), a State described in subparagraph (C) shall expend State funds in a fiscal year (before fiscal year 2000) under a MediGrant plan under this title in an amount not less than the adjusted base year State expenditures, plus the applicable percentage of the difference between such expenditures and the amount necessary to qualify for the full State outlay allotment so de-

scribed in such fiscal year as determined under this section without regard to this paragraph.

"(B) REDUCTION IN ALLOTMENT IF EXPENDITURE NOT MET.—In the event a State described in subparagraph (C) fails to expend State funds in an amount required by subparagraph (A) for a fiscal year, the outlay allotment described in section 2121(c)(3)(C)(i) for such year for such State shall be reduced by an amount which bears the same ratio to such outlay allotment as the State funds expended in such fiscal year bears to the amount required by subparagraph (A).

"(C) ADJUSTED BASE YEAR STATE EXPENDITURES.—For purposes of this paragraph, the term 'adjusted base year State expenditures' means—

"(i) for New Hampshire, $203,000,000, and

"(ii) for Louisiana, $355,000,000.

"(D) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage for a fiscal year is specified in the following table:

"Fiscal year:	***Applicable Percentage:***
1996	*20*
1997	*40*
1998	*60*
1999	*80.*

"(g) STATE FINANCIAL PARTICIPATION.—Each MediGrant plan shall provide for financial participation by the State equal to not less than 40 percent of the non-Federal share of the expenditures under the plan with respect to which payments may be made under this section.

"SEC. 2123. LIMITATION ON USE OF FUNDS; DISALLOWANCE.

"(a) IN GENERAL.—Funds provided to a State under this title shall only be used to carry out the purposes of this title.

"(b) DISALLOWANCES FOR EXCLUDED PROVIDERS.—

"(1) IN GENERAL.—Payment shall not be made to a State under this part for expenditures for items and services furnished—

"(A) by a provider who was excluded from participation under title V, XVIII, or XX or under this title pursuant to section 1128, 1128A, 1156, or 1842(j)(2), or

"(B) under the medical direction or on the prescription of a physician who was so excluded, if the provider of the services knew or had reason to know of the exclusion.

"(2) EXCEPTION FOR EMERGENCY SERVICES.—Paragraph (1) shall not apply to emergency items or services, not including hospital emergency room services.

"(c) LIMITATIONS.—

"(1) IN GENERAL.—No Federal financial assistance is available for expenditures under the MediGrant plan for—

"(A) medically-related services for a quarter to the extent such expenditures exceed 5 percent of the total expenditures under the plan for the quarter, or

"(B) total administrative expenses (other than expenses described in paragraph (2) during the first 8 quarters in

which the plan is in effect under this title) for quarters in a fiscal year to the extent such expenditures exceed the sum of $20,000,000 plus 10 percent of the total expenditures under the plan for the year.

"(2) ADMINISTRATIVE EXPENSES NOT SUBJECT TO LIMITATION.—The administrative expenses referred to in this paragraph are expenditures under the MediGrant plan for the following activities:

"(A) Quality assurance.

"(B) The development and operation of the certification program for nursing facilities and intermediate care facilities for the mentally retarded under section 2137.

"(C) Utilization review activities, including medical activities and activities of peer review organizations.

"(D) Inspection and oversight of providers and capitated health care organizations.

"(E) Anti-fraud activities.

"(F) Independent evaluations.

"(G) Activities required to meet reporting requirements under this title.

"(d) TREATMENT OF THIRD PARTY LIABILITY.—No payment shall be made to a State under this part for expenditures for medical assistance provided for an individual under its MediGrant plan to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

"(e) MEDIGRANT AS SECONDARY PAYER.—Except as otherwise provided by law, no payment shall be made to a State under this part for expenditures for medical assistance provided for an individual under its MediGrant plan to the extent that payment has been made or can reasonably be expected to be made promptly (as determined in accordance with regulations) under any other federally operated or financed health care program, other than a program operated or financed by the Indian Health Service, as identified by the Secretary. For purposes of this subsection, rules similar to the rules for overpayments under section 2122(b) shall apply.

"(f) LIMITATION ON PAYMENTS TO EMERGENCY SERVICES FOR NONLAWFUL ALIENS.—

"(1) IN GENERAL.—Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this part for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

"(2) EXCEPTION FOR EMERGENCY SERVICES.—Payment may be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

"(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

"(B) such alien otherwise meets the eligibility requirements for medical assistance under the MediGrant plan (other than a requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment), and

"(C) such care and services are not related to an organ transplant procedure.

"(3) EMERGENCY MEDICAL CONDITION DEFINED.—For purposes of this subsection, the term 'emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(A) placing the patient's health in serious jeopardy,

"(B) serious impairment to bodily functions, or

"(C) serious dysfunction of any bodily organ or part.

"(g) LIMITATION ON PAYMENT FOR CERTAIN OUTPATIENT PRESCRIPTION DRUGS.—

"(1) IN GENERAL.—No payment may be made to a State under this part for medical assistance for covered outpatient drugs (as defined in section 2175(i)(2)) of a manufacturer provided under the MediGrant plan unless the manufacturer (as defined in section 2175(i)(4)) of the drug—

"(A) has entered into a MediGrant master rebate agreement with the Secretary under section 2175,

"(B) is otherwise complying with the provisions of such section,

"(C) is complying with the provisions of section 8126 of title 38, United States Code, including the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section, and

"(D) subject to paragraph (4), is complying with the provisions of section 340B of the Public Health Service Act, including the requirement of entering into an agreement with the Secretary under such section.

"(2) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to participate in the MediGrant master rebate agreement under section 2175.

"(3) EFFECT OF SUBSEQUENT AMENDMENTS.—For purposes of subparagraphs (C) and (D), in determining whether a manufacturer is in compliance with the requirements of section 8126 of title 38, United States Code, or section 340B of the Public Health Service Act—

"(A) the Secretary shall not take into account any amendments to such sections that are enacted after the enactment of title VI of the Veterans Health Care Act of 1992, and

"(B) a manufacturer is deemed to meet such requirements if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of such sections (as in effect immediately after the enactment of the Veterans Health Care Act of 1992) and would have entered into an agreement under such section (as such section was in ef-

fect at such time), but for a legislative change in such section after the date of the enactment of the Veterans Health Care Act of 1992.

"(4) EFFECT OF ESTABLISHMENT OF ALTERNATIVE MECHANISM UNDER PUBLIC HEALTH SERVICE ACT.—If the Secretary does not establish a mechanism to ensure against duplicate discounts or rebates under section 340B(a)(5)(A) of the Public Health Service Act within 12 months of the date of the enactment of such section, the following requirements shall apply:

"(A) Each covered entity under such section shall inform the State when it is seeking reimbursement from the MediGrant plan for medical assistance with respect to a unit of any covered outpatient drug which is subject to an agreement under section 340B(a) of such Act.

"(B) Each such State shall provide a means by which such an entity shall indicate on any drug reimbursement claims form (or format, where electronic claims management is used) that a unit of the drug that is the subject of the form is subject to an agreement under section 340B of such Act, and not submit to any manufacturer a claim for a rebate payment with respect to such a drug.

"PART D—PROGRAM INTEGRITY AND QUALITY

"SEC. 2131. USE OF AUDITS TO ACHIEVE FISCAL INTEGRITY.

"(a) FINANCIAL AUDITS OF PROGRAM.—

"(1) IN GENERAL.—Each MediGrant plan shall provide for an annual audit of the State's expenditures from amounts received under this title, in compliance with chapter 75 of title 31, United States Code.

"(2) VERIFICATION AUDITS.—If, after consultation with the State and the Comptroller General and after a fair hearing, the Secretary determines that a State's audit under paragraph (1) was performed in substantial violation of chapter 75 of title 31, United States Code, the Secretary may—

"(A) require that the State provide for a verification audit in compliance with such chapter, or

"(B) conduct such a verification audit.

"(3) AVAILABILITY OF AUDIT REPORTS.—Within 30 days after completion of each audit or verification audit under this subsection, the State shall—

"(A) provide the Secretary with a copy of the audit report, including the State's response to any recommendations of the auditor, and

"(B) make the audit report available for public inspection in the same manner as proposed MediGrant plan amendments are made available under section 2105.

"(b) FISCAL CONTROLS.—

"(1) IN GENERAL.—With respect to the accounting and expenditure of funds under this title, each State shall adopt and maintain such fiscal controls, accounting procedures, and data processing safeguards as the State deems reasonably necessary to assure the fiscal integrity of the State's activities under this title.

"(2) CONSISTENCY WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—Such controls and procedures shall be generally consistent with generally accepted accounting principles as recognized by the Governmental Accounting Standards Board or the Comptroller General.

"(c) AUDITS OF PROVIDERS.—Each MediGrant plan shall provide that the records of any entity providing items or services for which payment may be made under the plan may be audited as necessary to ensure that proper payments are made under the plan.

"SEC. 2132. FRAUD PREVENTION PROGRAM.

"(a) ESTABLISHMENT.—Each MediGrant plan shall provide for the establishment and maintenance of an effective program for the detection and prevention of fraud and abuse by beneficiaries, providers, and others in connection with the operation of the program.

"(b) PROGRAM REQUIREMENTS.—The program established pursuant to subsection (a) shall include at least the following requirements:

"(1) DISCLOSURE OF INFORMATION.—Any disclosing entity (as defined in section 1124(a)) receiving payments under the MediGrant plan shall comply with the requirements of section 1124.

"(2) SUPPLY OF INFORMATION.—An entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, an item or service under the MediGrant plan shall supply upon request specifically addressed to the entity by the Secretary or the State agency the information described in section 1128(b)(9).

"(3) EXCLUSION.—

"(A) IN GENERAL.—The MediGrant plan shall exclude any specified individual or entity from participation in the plan for the period specified by the Secretary when required by the Secretary to do so pursuant to section 1128 or section 1128A, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period.

"(B) AUTHORITY.—In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the MediGrant plan for any reason for which the Secretary could exclude the individual or entity from participation in a program under title XVIII or under section 1128, 1128A, or 1866(b)(2).

"(4) NOTICE.—The MediGrant plan shall provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the plan, the State agency responsible for administering the plan shall promptly notify the Secretary and, in the case of a physician, the State medical licensing board of such action.

"(5) ACCESS TO INFORMATION.—The MediGrant plan shall provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 2133.

"SEC. 2133. INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS.

"(a) INFORMATION REPORTING REQUIREMENT.—The requirement referred to in section 2132(b)(5) is that the State must provide for the following:

"(1) INFORMATION REPORTING SYSTEM.—The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities:

"(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

"(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

"(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

"(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

"(2) ACCESS TO DOCUMENTS.—The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this Act.

"(b) FORM OF INFORMATION.—The information described in subsection (a)(1) shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this Act and in order to provide, directly or through suitable arrangements made by the Secretary, information—

"(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

"(2) to licensing authorities described in subsection (a)(1),

"(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1128(h)),

"(4) to utilization and quality control peer review organizations described in part B of title XI and to appropriate entities with contracts under section 1154(a)(4)(C) with respect to eligible organizations reviewed under the contracts,

"(5) to State MediGrant fraud control units (as defined in section 2134),

"(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 of, and be subject to the provisions of, that Act),

"(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

"(8) upon request, to the Comptroller General,

in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

"(c) CONFIDENTIALITY OF INFORMATION PROVIDED.—The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

"(d) APPROPRIATE COORDINATION.—The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986 and section 1128E.

"SEC. 2134. STATE MEDIGRANT FRAUD CONTROL UNITS.

"(a) IN GENERAL.—Each MediGrant plan shall provide for a State MediGrant fraud control unit described in subsection (b) that effectively carries out the functions and requirements described in such subsection, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit.

"(b) UNITS DESCRIBED.—For purposes of this section, the term 'State MediGrant fraud control unit' means a single identifiable entity of the State government which meets the following requirements:

"(1) ORGANIZATION.—The entity—

"(A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations;

"(B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures that—

"(i) assure its referral of suspected criminal violations relating to the program under this title to the ap-

propriate authority or authorities in the State for prosecution, and

“(ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions; or

“(C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this title.

“(2) INDEPENDENCE.—The entity is separate and distinct from any State agency that has principal responsibilities for administering or supervising the administration of the MediGrant plan.

“(3) FUNCTION.—The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the MediGrant plan.

“(4) REVIEW OF COMPLAINTS.—The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the MediGrant plan under this title, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

“(5) OVERPAYMENTS.—

“(A) IN GENERAL.—The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the MediGrant plan to health care providers and that are discovered by the entity in carrying out its activities.

“(B) TREATMENT OF CERTAIN OVERPAYMENTS.—If an overpayment is the direct result of the failure of the provider (or the provider's billing agent) to adhere to a change in the State's billing instructions, the entity may recover the overpayment only if the entity demonstrates that the provider (or the provider's billing agent) received prior written or electronic notice of the change in the billing instructions before the submission of the claims on which the overpayment is based.

“(6) PERSONNEL.—The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

“SEC. 2135. RECOVERIES FROM THIRD PARTIES AND OTHERS.

“(a) THIRD PARTY LIABILITY.—Each MediGrant plan shall provide for reasonable steps—

“(1) to ascertain the legal liability of third parties to pay for care and services available under the plan, including the collec-

tion of sufficient information to enable States to pursue claims against third parties, and

"(2) to seek reimbursement for medical assistance provided to the extent legal liability is established where the amount expected to be recovered exceeds the costs of the recovery.

"(b) BENEFICIARY PROTECTION.—

"(1) IN GENERAL.—Each MediGrant plan shall provide that in the case of a person furnishing services under the plan for which a third party may be liable for payment—

"(A) the person may not seek to collect from the individual (or financially responsible relative) payment of an amount for the service more than could be collected under the plan in the absence of such third party liability, and

"(B) may not refuse to furnish services to such an individual because of a third party's potential liability for payment for the service.

"(2) PENALTY.—A MediGrant plan may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to 3 times the amount of any payment sought to be collected by that person in violation of paragraph (1)(A).

"(c) GENERAL LIABILITY.—The State shall prohibit any health insurer, including a group health plan as defined in section 607 of the Employee Retirement Income Security Act of 1974, a service benefit plan, or a health maintenance organization, in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a MediGrant plan for any State.

"(d) ACQUISITION OF RIGHTS OF BENEFICIARIES.—To the extent that payment has been made under a MediGrant plan in any case where a third party has a legal liability to make payment for such assistance, the State shall have in effect laws under which, to the extent that payment has been made under the plan for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services.

"(e) ASSIGNMENT OF MEDICAL SUPPORT RIGHTS.—The MediGrant plan shall provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients in accordance with section 2136.

"(f) REQUIRED LAWS RELATING TO MEDICAL CHILD SUPPORT.—

"(1) IN GENERAL.—Each State with a MediGrant plan shall have in effect the following laws:

"(A) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

"(i) the child was born out of wedlock,

"(ii) the child is not claimed as a dependent on the parent's Federal income tax return, or

"(iii) the child does not reside with the parent or in the insurer's service area.

"(B) In any case in which a parent is required by a court or administrative order to provide health coverage for

a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

"(i) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

"(ii) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

"(iii) not to disenroll, or eliminate coverage of, such a child unless the insurer is provided satisfactory written evidence that—

"(I) such court or administrative order is no longer in effect, or

"(II) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

"(C) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

"(i) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

"(ii) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

"(iii) not to disenroll (or eliminate coverage of) any such child unless—

"(I) the employer is provided satisfactory written evidence that such court or administrative order is no longer in effect, or the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

"(II) the employer has eliminated family health coverage for all of its employees; and

"(iv) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Credit Protection Act), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which

an employer may withhold less than such employee's share of such premiums.

"(D) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this title and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

"(E) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

"(i) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage,

"(ii) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent, and

"(iii) to make payment on claims submitted in accordance with clause (ii) directly to such custodial parent, the provider, or the State agency.

"(F) A law that permits the State agency under this title to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

"(i) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this title,

"(ii) has received payment from a third party for the costs of such services to such child, but

"(iii) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this title, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

"(2) DEFINITION.—For purposes of this subsection, the term 'insurer' includes a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a health maintenance organization, and an entity offering a service benefit plan.

"(g) ESTATE RECOVERIES AND LIENS PERMITTED.—A State may take such actions as it considers appropriate to adjust or recover from the individual or the individual's estate any amounts paid as medical assistance to or on behalf of the individual under the MediGrant plan, including through the imposition of liens against the property or estate of the individual.

"SEC. 2136. ASSIGNMENT OF RIGHTS OF PAYMENT.

"(a) IN GENERAL.—For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the MediGrant plan, each MediGrant plan shall—

"(1) provide that, as a condition of eligibility for medical assistance under the plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

"(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under the plan and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party,

"(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is a pregnant woman or the individual is found to have good cause for refusing to cooperate as determined by the State, and

"(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State; and

"(2) provide for entering into cooperative arrangements, including financial arrangements, with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 454(3)) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the plan with respect to—

"(A) the enforcement and collection of rights to support or payment assigned under this section, and

"(B) any other matters of common concern.

"(b) USE OF AMOUNTS COLLECTED.—Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

"SEC. 2137. QUALITY ASSURANCE REQUIREMENTS FOR NURSING FACILITIES.

"(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 reasonably 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. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

"(2) SCOPE OF SERVICES AND ACTIVITIES UNDER PLAN OF CARE.—A nursing facility must provide services and activities 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) uses an instrument which is specified by the State under subsection (e)(5); and

"(iii) 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 provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(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 14 days after the date of) admission for each individual admitted;

"(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 resi-

dent'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. In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.

"(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;

"(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of residents;

"(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of residents;

"(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of residents;

"(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 residents; and

"(vi) routine dental services (to the extent covered under the State MediGrant plan) and emergency dental services to meet the needs of residents.

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.—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 professional nurse for at least 8 consecutive hours a day, 7 days a week.

"(ii) WAIVER BY STATE.—To the extent that a facility is unable to meet the requirements of clause (i), a

State may waive such requirements with respect to the 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,

“(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the facility,

“(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

“(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (iii) 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 use other qualified, licensed personnel.

“(iii) 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 exercise the authority of the State to grant waivers.

“(5) REQUIRED TRAINING OF NURSE AIDES.—

“(A) IN GENERAL.—(i) Except as provided in clause (ii), a nursing facility must not use on a full-time basis any individual as a nurse aide in the facility, 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 nursing or nursing-related services.

“(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the fa-

cility, unless the individual meets the requirements described in clause (i).

"(B) OFFERING COMPETENCY EVALUATION PROGRAMS FOR CURRENT EMPLOYEES.—A nursing facility must provide, for individuals used as a nurse aide by the facility, 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.

"(C) COMPETENCY.—The nursing facility must not permit an individual, other than in a training and 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 any State registry established under subsection (e)(2)(A) that the facility believes will include information 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, or a new 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 a registered dietician,

"(ii) who volunteers to provide such services without monetary compensation, or

"(iii) who is trained, whether compensated or not, to perform a task-specific function which assists residents in their daily activities.

"(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, physical or occupational therapy assistant, 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 (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with 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)).

"(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 and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

"(v) ACCOMMODATION OF NEEDS.—The right—

"(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the in-

dividual or other residents would be endangered, and

"(II) to receive notice before the room or roommate of the resident in the facility is changed unless a delay in changing the room or roommate while notice is given would endanger the resident or others.

"(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.

"(viii) 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.

"(ix) 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.

"(x) 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 and of the requirements and procedures for establishing eligibility for medical assistance under this title, including the right to request an assessment under section 2115(c)(1)(B);

"(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6);

"(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 that are included in nursing facility services under the State MediGrant plan and for which the resident may not be charged, 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) for a stay at the facility; or

"(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), 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, an immediate 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;

"(IV) in a case where a resident has not resided in the facility for 30 days; or

"(V) in a case where the provision of a 30-day notice would be impossible or impracticable.

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) 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 title III or VII 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.

"(iv) EXCEPTION.—This subparagraph shall not apply to a voluntary transfer or discharge or a transfer or discharge necessitated by a medical emergency.

"(C) ORIENTATION.—A nursing facility must provide reasonable preparation and orientation to residents to promote 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 an immediate family member or legal representative concerning—

"(I) the provisions of the State MediGrant plan under this title regarding the period (if any) during which the resident will be permitted under the State MediGrant 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 an immediate 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 MediGrant 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 MediGrant 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 room (not including a 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, unless such access would endanger the health or safety of the resident or others in the facility;

"(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 MediGrant plan for all individuals regardless of source of payment.

"(B) CONSTRUCTION.—

"(i) NOTHING PROHIBITING ANY CHARGES FOR NON-MEDIGRANT 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 MediGrant plan.

"(5) 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) upon 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 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 $250 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 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. All other personal property, including medical records, shall be considered part of the resident's estate and shall only be released to the administrator of the estate.

"(C) ASSURANCE OF FINANCIAL SECURITY.—The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the State, 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.

"(6) LIMITATION ON CHARGES IN CASE OF MEDIGRANT-ELIGIBLE INDIVIDUALS.—A nursing facility may not impose charges, for certain MediGrant-eligible individuals for nursing facility services covered by the State under its plan under this title, that exceed the payment amounts established by the State for such services under this title.

"(7) POSTING OF SURVEY RESULTS.—A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g).

"(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, whether freestanding or hospital-based, must meet such standards as are established by the Secretary.

"(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, whether freestanding or hospital-based, must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the re-

quirements 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.

"(e) STATE REQUIREMENTS RELATING TO NURSING FACILITY REQUIREMENTS.—A State with a MediGrant plan shall 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) 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 subsection (f)(2), and

"(B) 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).

"(2) NURSE AIDE REGISTRY.—

"(A) IN GENERAL.—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, or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

"(B) INFORMATION IN REGISTRY.—The registry under subparagraph (A) shall provide 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. The State shall make available to the public information in the registry. 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.

"(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

"(3) STATE APPEALS PROCESS FOR TRANSFERS AND DISCHARGES.—The State must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3), for hearing appeals on transfers and discharges of residents of such facilities.

"(4) NURSING FACILITY ADMINISTRATOR STANDARDS.—The State must implement and enforce the nursing facility adminis-

trator standards developed under subsection (f)(4) respecting the qualification of administrators of nursing facilities. Any such standards promulgated shall apply to administrators of hospital-based facilities as well as administrators of freestanding facilities.

"(5) SPECIFICATION OF RESIDENT ASSESSMENT INSTRUMENT.—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).

"(6) NOTICE OF MEDIGRANT RIGHTS.—Each State shall 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.—

"(i) IN GENERAL.—The State must have in effect a preadmission screening program, for identifying mentally ill and mentally retarded individuals (as defined in subparagraph (B)) who are admitted to nursing facilities.

"(ii) STATE REQUIREMENT FOR RESIDENT REVIEW.—The State shall notify the State mental health authority or the State mental retardation or developmental disability authority, as appropriate, of the individuals so identified.

"(B) DEFINITIONS.—In this paragraph:

"(i) An individual is considered to be 'mentally ill' if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

"(ii) An individual is considered to be 'mentally retarded' if the individual is mentally retarded or a person with a related condition.

"(f) RESPONSIBILITIES RELATING TO NURSING FACILITY REQUIREMENTS.—

"(1) GENERAL RESPONSIBILITY.—It is the duty and responsibility of a State with a MediGrant plan under this title to assure that requirements which govern the provision of care in nursing facilities under the plan, 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.—For purposes of subsections (b)(5) and (e)(1)(A), the State shall establish—

"(A) 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, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, (ii) minimum hours of initial and ongoing training and retraining, (iii) qualifications of instructors, and (iv) procedures for determination of competency;

"(B) 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, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights, and procedures for determination of competency;

"(C) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

"(D) requirements, under both such programs, that—

"(i) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed, and

"(ii) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program.

"(3) QUALIFICATION OF ADMINISTRATORS.—For purposes of subsections (d)(1)(C) and (e)(4), the State shall develop standards to be applied in assuring the qualifications of administrators of nursing facilities. Any such standards must apply to administrators of hospital-based facilities as well as administrators of freestanding facilities.

"(g) SURVEY AND CERTIFICATION PROCESS.—

"(1) STATE AND FEDERAL RESPONSIBILITY.—

"(A) IN GENERAL.—Under each State MediGrant plan under this title, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities 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) 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 and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide 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. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

"(2) SURVEYS.—

"(A) ANNUAL STANDARD SURVEY.—

"(i) IN GENERAL.—Each 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 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 provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The State shall take 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 24 months after the date of the previous standard sur-

vey conducted under this subparagraph, except that in the case of a facility which has been subjected to an extended survey under subparagraph (B), a standard survey shall be conducted not later than 12 months after the date of the preceding extended survey.

"(II) SPECIAL SURVEYS.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 4 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 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 practicable, 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 the protocol which the Secretary has developed, tested, and validated, as of the date of the enactment of this title, and

"(ii) by individuals, of a survey team, who meet such minimum qualifications as the State establishes.

"(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.

"(3) VALIDATION SURVEYS.—

"(A) IN GENERAL.—The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 4 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) at least every third 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) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has found substantial evidence of a pattern of noncompliance by 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 the basis of that survey, make 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.

“(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, within a reasonable time after such information is made available to those facilities, and approved 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 title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act) of the State’s findings of noncompliance with any of the requirements of subsections (b), (c), and (d), or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h), 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 MediGrant fraud and abuse control unit (established under section 2134) with access to all information of the State agency responsible for surveys and certifications under this 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)—

“(A) the State shall require the facility to correct the deficiency involved;

“(B) if the State finds that the facility’s deficiencies 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 MediGrant plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); and

“(C) if the State finds that the facility’s deficiencies do not immediately jeopardize the health or safety of its residents, the State may—

"(i) terminate the facility's participation under the State MediGrant plan,

"(ii) provide for one or more of the remedies described in paragraph (2), or

"(iii) do both.

"(2) SPECIFIED REMEDIES.—

"(A) LISTING.—Except as provided in subparagraph (B), each State shall establish by law (whether statute or regulation) at least the following remedies:

"(i) Denial of payment under the State MediGrant 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).

"(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.

"(B) ALTERNATIVE REMEDIES.—A State may establish alternative remedies to the remedies described in 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 such subparagraph.

"(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 may 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.

"(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. Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies.

"(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), or (d), the Secretary shall notify the State of such deficiency. If, after a reasonable period of time after such notification is given, the Secretary finds that the State has failed to carry out the requirements of paragraph (1)(A) or paragraph (1)(B) (if appropriate) with respect to the deficiency involved, or that the deficiency remains uncorrected—

"(i) the Secretary shall require the facility to correct the deficiency involved;

"(ii) if the Secretary finds that the deficiency involved immediately jeopardizes the health or safety of its residents, the Secretary shall, in consultation with the State, take 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 MediGrant plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); and

"(iii) in the case of a deficiency that remains uncorrected, if the Secretary finds that the deficiency involved does not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

"(C) SPECIFIED REMEDIES.—The remedies specified in this subparagraph are as follows:

"(i) DENIAL OF PAYMENT.—Denial of any further payments to the State in accordance with section 2154(f) 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.—Imposition of a civil money penalty against the facility in an amount not to exceed $5,000 for each day of noncompliance. The provisions of sec-

tion 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(iii) APPOINTMENT OF TEMPORARY MANAGEMENT.—Appointment of temporary management (in consultation with the State) 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.

"(4) SPECIAL RULES REGARDING PAYMENTS TO FACILITIES.—

"(A) CONTINUATION OF PAYMENTS PENDING REMEDIATION.—The State or the Secretary, as appropriate, may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this title with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d).

"(B) EFFECTIVE PERIOD OF DENIAL OF PAYMENT.—A finding to deny payment under this subsection shall terminate when the State or Secretary (as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d).

"(5) CONSTRUCTION.—The remedies provided under this subsection are in addition to those otherwise available under Federal or State law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of title XVIII or is accredited by an entity pursuant to subsection (i)(2).

"(6) 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 by such facilities 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 MediGrant fraud control units.

"(i) CONSTRUCTION.—

"(1) MEDICARE REQUIREMENTS.—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.

"(2) EFFECT OF ACCREDITATION.—

"(A) IN GENERAL.—At the option of a State, or the Secretary, as appropriate, if a nursing facility in the State is accredited by a national accrediting entity meeting such standards as the State or the Secretary may impose, such facility shall be deemed to have met the requirements of this section and the State shall be deemed to have met the survey and certification requirements under subsection (g).

"(B) REQUIREMENT FOR ACCREDITING ENTITY.—A State or the Secretary, as appropriate, may not find that an accrediting entity meets standards under subparagraph (A) unless such entity applies standards for accreditation for facilities that meet or exceed the requirements of this section.

"SEC. 2138. OTHER PROVISIONS PROMOTING PROGRAM INTEGRITY.

"(a) PUBLIC ACCESS TO SURVEY RESULTS.—Each MediGrant plan shall provide that upon completion of a survey of any health care facility or organization by a State agency to carry out the plan, the agency shall make public in readily available form and place the pertinent findings of the survey relating to the compliance of the facility or organization with requirements of law.

"(b) RECORD KEEPING.—Each MediGrant plan shall provide for agreements with persons or institutions providing services under the plan under which the person or institution agrees—

"(1) to keep such records, including ledgers, books, and original evidence of costs, as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under the plan, and

"(2) to furnish the State agency with such information regarding any payments claimed by such person or institution for providing services under the plan, as the State agency may from time to time request.

"(c) QUALITY ASSURANCE.—Each MediGrant plan shall provide a program to assure the quality of services provided under the plan, including such services provided to individuals with chronic mental or physical illness.

"PART E—ESTABLISHMENT AND AMENDMENT OF MEDIGRANT PLANS

"SEC. 2151. SUBMITTAL AND APPROVAL OF MEDIGRANT PLANS.

"(a) SUBMITTAL.—As a condition of receiving funding under part C, each State shall submit to the Secretary a MediGrant plan that meets the applicable requirements of this title.

"(b) APPROVAL.—Except as the Secretary may provide under section 2154, a MediGrant plan submitted under subsection (a)—

"(1) shall be approved for purposes of this title, and

"(2) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than the first

calendar quarter that begins at least 60 days after the date the plan is submitted.

"SEC. 2152. SUBMITTAL AND APPROVAL OF PLAN AMENDMENTS.

"(a) SUBMITTAL OF AMENDMENTS.—A State may amend, in whole or in part, its MediGrant plan at any time through transmittal of a plan amendment under this section.

"(b) APPROVAL.—Except as the Secretary may provide under section 2154, an amendment to a MediGrant plan submitted under subsection (a)—

"(1) shall be approved for purposes of this title, and

"(2) shall be effective as provided in subsection (c).

"(c) EFFECTIVE DATES FOR AMENDMENTS.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an amendment to a MediGrant plan shall take effect on one or more effective dates specified in the amendment.

"(2) AMENDMENTS RELATING TO ELIGIBILITY OR BENEFITS.—Except as provided in paragraph (4)—

"(A) NOTICE REQUIREMENT.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior or contemporaneous public notice of the change, in a form and manner provided under applicable State law.

"(B) TIMELY TRANSMITTAL.—Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60 day period unless the amendment has been transmitted to the Secretary before the end of such period.

"(3) OTHER AMENDMENTS.—Subject to paragraph (4), any plan amendment that is not described in paragraph (2) becomes effective in a State fiscal year may not remain in effect after the end of such fiscal year (or, if later, the end of the 90-day period on which it becomes effective) unless the amendment has been transmitted to the Secretary.

"(4) EXCEPTION.—The requirements of paragraphs (2) and (3) shall not apply to a plan amendment that is submitted on a timely basis pursuant to a court order or an order of the Secretary.

"SEC. 2153. PROCESS FOR STATE WITHDRAWAL FROM PROGRAM.

"(a) IN GENERAL.—A State may rescind its MediGrant plan and discontinue participation in the program under this title at any time after providing—

"(1) the public with 90 days prior notice in a publication in one or more daily newspapers of general circulation in the State or in any publication used by the State to publish State statutes or rules, and

"(2) the Secretary with 90 days prior written notice.

"(b) EFFECTIVE DATE.—Such discontinuation shall not apply to payments under part C for expenditures made for items and services furnished under the MediGrant plan before the effective date of the discontinuation.

"(c) PRORATION OF ALLOTMENTS.—In the case of any withdrawal under this section other than at the end of a Federal fiscal

year, notwithstanding any provision of section 2121 to the contrary, the Secretary shall provide for such appropriate proration of the application of allotments under section 2121 as is appropriate.

"SEC. 2154. SANCTIONS FOR NONCOMPLIANCE.

"(a) PROMPT REVIEW OF PLAN SUBMITTALS.—The Secretary shall promptly review MediGrant plans and plan amendments submitted under this part to determine if they substantially comply with the requirements of this title.

"(b) DETERMINATIONS OF SUBSTANTIAL NONCOMPLIANCE.—

"(1) AT TIME OF PLAN OR AMENDMENT SUBMITTAL.—

"(A) IN GENERAL.—If the Secretary, during the 30-day period beginning on the date of submittal of a MediGrant plan or plan amendment—

"(i) determines that the plan or amendment substantially violates (within the meaning of subsection (c)) a requirement of this title, and

"(ii) provides written notice of such determination to the State,

the Secretary shall issue an order specifying that the plan or amendment, insofar as it is in substantial violation of such a requirement, shall not be effective, except as provided in subsection (c), beginning at the end of a period of not less than 30 days (or 120 days in the case of the initial submission of the MediGrant plan) specified in the order beginning on the date of the notice of the determination.

"(B) EXTENSION OF TIME PERIODS.—The time periods specified in subparagraph (A) may be extended by written agreement of the Secretary and the State involved.

"(2) VIOLATIONS IN ADMINISTRATION OF PLAN.—

"(A) IN GENERAL.—If the Secretary determines, after reasonable notice and opportunity for a hearing for the State, that in the administration of a MediGrant plan there is a substantial violation of a requirement of this title, the Secretary shall provide the State with written notice of the determination and with an order to remedy such violation. Such an order shall become effective prospectively, as specified in the order, after the date of receipt of such written notice. Such an order may include the withholding of funds, consistent with subsection (f), for parts of the MediGrant plan affected by such violation, until the Secretary is satisfied that the violation has been corrected.

"(B) EFFECTIVENESS.—If the Secretary issues an order under paragraph (1), the order shall become effective, except as provided in subsection (c), beginning at the end of a period (of not less than 30 days) specified in the order beginning on the date of the notice of the determination to the State.

"(C) TIMELINESS OF DETERMINATIONS RELATING TO REPORT-BASED COMPLIANCE.—The Secretary shall make determinations under this paragraph respecting violations relating to information contained in an annual report under section 2102, an independent evaluation under section 2103, or an audit report under section 2131 not later than

30 days after the date of transmittal of the report or evaluation to the Secretary.

"(3) CONSULTATION WITH STATE.—Before making a determination adverse to a State under this section, the Secretary shall (within any time periods provided under this section)—

"(A) reasonably consult with the State involved,

"(B) offer the State a reasonable opportunity to clarify the submission and submit further information to substantiate compliance with the requirements of this title, and

"(C) reasonably consider any such clarifications and information submitted.

"(4) JUSTIFICATION OF ANY INCONSISTENCIES IN DETERMINATIONS.—If the Secretary makes a determination under this section that is, in whole or in part, inconsistent with any previous determination issued by the Secretary under this title, the Secretary shall include in the determination a detailed explanation and justification for any such difference.

"(5) SUBSTANTIAL VIOLATION DEFINED.—For purposes of this title, a MediGrant plan (or amendment to such a plan) or the administration of the MediGrant plan is considered to 'substantially violate' a requirement of this title if a provision of the plan or amendment (or an omission from the plan or amendment) or the administration of the plan—

"(A) is material and substantial in nature and effect, and

"(B) is inconsistent with an express requirement of this title.

A failure to meet a strategic objective or performance goal (as described in section 2101) shall not be considered to substantially violate a requirement of this title.

"(c) STATE RESPONSE TO ORDERS.—

"(1) STATE RESPONSE BY REVISING PLAN.—

"(A) IN GENERAL.—Insofar as an order under subsection (b)(1) relates to a substantial violation by a MediGrant plan or plan amendment, a State may respond (before the date the order becomes effective) to such an order by submitting a written revision of the MediGrant plan or plan amendment to substantially comply with the requirements of this part.

"(B) REVIEW OF REVISION.—In the case of submission of such a revision, the Secretary shall promptly review the submission and shall withhold any action on the order during the period of such review.

"(C) SECRETARIAL RESPONSE.—The revision shall be considered to have corrected the deficiency (and the order rescinded insofar as it relates to such deficiency) unless the Secretary determines and notifies the State in writing, within 15 days after the date the Secretary receives the revision, that the MediGrant plan or amendment, as proposed to be revised, still substantially violates a requirement of this title. In such case the State may respond by seeking reconsideration or a hearing under paragraph (2).

"(D) REVISION RETROACTIVE.—If the revision provides for substantial compliance, the revision may be treated, at

the option of the State, as being effective either as of the effective date of the provision to which it relates or such later date as the State and Secretary may agree.

"(2) STATE RESPONSE BY SEEKING RECONSIDERATION OR AN ADMINISTRATIVE HEARING.—A State may respond to an order under subsection (b) by filing a request with the Secretary for—

"(A) a reconsideration of the determination, pursuant to subsection (d)(1), or

"(B) a review of the determination through an administrative hearing, pursuant to subsection (d)(2).

In such case, the order shall not take effect before the completion of the reconsideration or hearing.

"(3) STATE RESPONSE BY CORRECTIVE ACTION PLAN.—

"(A) IN GENERAL.—In the case of an order described in subsection (b)(2) that relates to a substantial violation in the administration of the MediGrant plan, a State may respond to such an order by submitting a corrective action plan with the Secretary to correct deficiencies in the administration of the plan which are the subject of the order.

"(B) REVIEW OF CORRECTIVE ACTION PLAN.—In such case, the Secretary shall withhold any action on the order for a period (not to exceed 30 days) during which the Secretary reviews the corrective action plan.

"(C) SECRETARIAL RESPONSE.—The corrective action plan shall be considered to have corrected the deficiency (and the order rescinded insofar as it relates to such deficiency) unless the Secretary determines and notifies the State in writing, within 15 days after the date the Secretary receives the corrective action plan, that the State's administration of the MediGrant plan, as proposed to be corrected in the plan, will still substantially violate a requirement of this title. In such case the State may respond by seeking reconsideration or a hearing under paragraph (2).

"(4) STATE RESPONSE BY WITHDRAWAL OF PLAN AMENDMENT; FAILURE TO RESPOND.—Insofar as an order relates to a substantial violation in a plan amendment submitted, a State may respond to such an order by withdrawing the plan amendment and the MediGrant plan shall be treated as though the amendment had not been made.

"(d) ADMINISTRATIVE REVIEW AND HEARING.—

"(1) RECONSIDERATION.—Within 30 days after the date of receipt of a request under subsection (b)(2)(A), the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering the Secretary's determination. The hearing shall be held not less than 20 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Secretary and the State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse the original determination within 60 days of the conclusion of the hearing.

"(2) ADMINISTRATIVE HEARING.—Within 30 days after the date of receipt of a request under subsection (b)(2)(B), an administrative law judge shall schedule a hearing for the purpose

of reviewing the Secretary's determination. The hearing shall be held not less than 20 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Secretary and the State agree in writing to holding the hearing at another time. The administrative law judge shall affirm, modify, or reverse the determination within 60 days of the conclusion of the hearing.

"(e) JUDICIAL REVIEW.—

"(1) IN GENERAL.—A State which is dissatisfied with a final determination made by the Secretary under subsection (d)(1) or a final determination of an administrative law judge under subsection (d)(2) may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which the State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary and, in the case of a determination under subsection (d)(2), to the administrative law judge involved. The Secretary (or judge involved) thereupon shall file in the court the record of the proceedings on which the final determination was based, as provided in section 2112 of title 28, United States Code. Only the Secretary, in accordance with this title, may compel a State under Federal law to comply with the provisions of this title or a MediGrant plan, or otherwise enforce a provision of this title against a State, and no action may be filed under Federal law against a State in relation to the State's compliance, or failure to comply, with the provisions of this title or of a MediGrant plan except by the Secretary as provided under this subsection.

"(2) STANDARD FOR REVIEW.—The findings of fact by the Secretary or administrative law judge, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary or judge to take further evidence, and the Secretary or judge may thereupon make new or modified findings of fact and may modify a previous determination, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(3) JURISDICTION OF APPELLATE COURT.—The court shall have jurisdiction to affirm the action of the Secretary or judge or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(f) WITHHOLDING OF FUNDS.—

"(1) IN GENERAL.—Any order under this section relating to the withholding of funds shall be effective not earlier than the effective date of the order and shall only relate to the portions of a MediGrant plan or administration thereof which substantially violate a requirement of this title. In the case of a failure to meet a set-aside requirement under section 2112, any withholding shall only apply to the extent of such failure.

"(2) SUSPENSION OF WITHHOLDING.—The Secretary may suspend withholding of funds under paragraph (1) during the

period reconsideration or administrative and judicial review is pending under subsection (d) or (e).

"(3) RESTORATION OF FUNDS.—Any funds withheld under this subsection under an order shall be immediately restored to a State—

"(A) to the extent and at the time the order is—

"(i) modified or withdrawn by the Secretary upon reconsideration,

"(ii) modified or reversed by an administrative law judge, or

"(iii) set aside (in whole or in part) by an appellate court; or

"(B) when the Secretary determines that the deficiency which was the basis for the order is corrected;

"(C) when the Secretary determines that violation which was the basis for the order is resolved or the amendment which was the basis for the order is withdrawn; or

"(D) at any time upon the initiative of the Secretary.

"(g) INDIVIDUAL COMPLAINT PROCESS.—The Secretary shall provide for a process under which an individual may notify the Secretary concerning a State's failure to provide medical assistance as required under the State MediGrant plan or otherwise comply with the requirements of this title or such plan. If the Secretary finds that there is a pattern of complaints with respect to a State or that a particular failure or finding of noncompliance is egregious, the Secretary shall notify the chief executive officer of the State of such finding and shall notify the Congress if the State fails to respond to such notification within a reasonable period of time.

"SEC. 2155. SECRETARIAL AUTHORITY.

"(a) NEGOTIATED AGREEMENT AND DISPUTE RESOLUTION.—

"(1) NEGOTIATIONS.—Nothing in this part shall be construed as preventing the Secretary and a State from at any time negotiating a satisfactory resolution to any dispute concerning the approval of a MediGrant plan (or amendments to a MediGrant plan) or the compliance of a MediGrant plan (including its administration) with requirements of this title.

"(2) COOPERATION.—The Secretary shall act in a cooperative manner with the States in carrying out this title. In the event of a dispute between a State and the Secretary, the Secretary shall, whenever practicable, engage in informal dispute resolution activities in lieu of formal enforcement or sanctions under section 2154.

"(b) LIMITATIONS ON DELEGATION OF DECISION-MAKING AUTHORITY.—The Secretary may not delegate (other than to the Administrator of the Health Care Financing Administration) the authority to make determinations or reconsiderations respecting the approval of MediGrant plans (or amendments to such plans) or the compliance of a MediGrant plan (including its administration) with requirements of this title. Such Administrator may not further delegate such authority to any individual, including any regional official of such Administration.

"(c) REQUIRING FORMAL RULEMAKING FOR CHANGES IN SECRETARIAL ADMINISTRATION.—The Secretary shall carry out the administration of the program under this title only through a prospec-

tive formal rulemaking process, including issuing notices of proposed rulemaking, publishing proposed rules or modifications to rules in the Federal Register, and soliciting public comment.

"PART F—GENERAL PROVISIONS

"SEC. 2171. DEFINITIONS.

"(a) MEDICAL ASSISTANCE.—For purposes of this title, the term 'medical assistance' means payment of part or all of the cost of any of the following, or assistance in the purchase, in whole or in part, of health benefit coverage that includes any of the following, for eligible low-income individuals (as defined in subsection (b)) as specified under the MediGrant plan:

"(1) Inpatient hospital services.

"(2) Outpatient hospital services.

"(3) Physician services.

"(4) Surgical services.

"(5) Clinic services and other ambulatory health care services.

"(6) Nursing facility services.

"(7) Intermediate care facility services for the mentally retarded.

"(8) Prescription drugs and biologicals and the administration of such drugs and biologicals, only if such drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

"(9) Over-the-counter medications.

"(10) Laboratory and radiological services.

"(11) Family planning services and supplies.

"(12) Inpatient mental health services, including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services in the case of a child.

"(13) Outpatient mental health services, including services furnished in a State-operated mental hospital and including community-based services in the case of a child.

"(14) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices).

"(15) Disposable medical supplies.

"(16) Home and community-based health care services and related supportive services (such as home health nursing services, home health aide services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members, and minor modifications to the home).

"(17) Community supported living arrangements.

"(18) Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice nurse services, private duty nursing care, pediatric nurse services, and respiratory care services) in a home, school, or other setting.

"(19) Abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

"(20) Dental services.

“(21) Inpatient substance abuse treatment services and residential substance abuse treatment services.

“(22) Outpatient substance abuse treatment services.

“(23) Case management services.

“(24) Care coordination services.

“(25) Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

“(26) Hospice care.

“(27) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is—

“(A) prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law,

“(B) performed under the general supervision or at the direction of a physician, or

“(C) furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

“(28) Premiums for private health care insurance coverage, including private long-term care insurance coverage.

“(29) Medical transportation.

“(30) Medicare cost-sharing (as defined in subsection (c)).

“(31) Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

“(32) Any other health care services or items specified by the Secretary and not excluded under this section.

“(b) ELIGIBLE LOW-INCOME INDIVIDUAL.—

“(1) IN GENERAL.—The term ‘eligible low-income individual’ means an individual—

“(A) who has been determined eligible by the State for medical assistance under the MediGrant plan and is not an inmate of a public institution (except as a patient in a State psychiatric hospital), and

“(B) whose family income (as determined under the plan) does not exceed a percentage (specified in the MediGrant plan and not to exceed 275 percent) of the poverty line for a family of the size involved.

“(2) AMOUNT OF INCOME.—In determining the amount of income under paragraph (1)(B), a State may exclude costs incurred for medical care or other types of remedial care recognized by the State.

“(c) MEDICARE COST-SHARING.—For purposes of this title, the term ‘medicare cost-sharing’ means any of the following:

“(1)(A) Premiums under section 1839.

“(B) Premiums under section 1818 or 1818A.

“(2) Coinsurance under title XVIII (including coinsurance described in section 1813).

“(3) Deductibles established under title XVIII (including those described in sections 1813 and 1833(b)).

"(4) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to '80 percent' therein were deemed a reference to '100 percent'.

"(5) Premiums for enrollment of an individual with an eligible organization under section 1876 or with a MedicarePlus organization under part C of title XVIII.

"(d) ADDITIONAL DEFINITIONS.—For purposes of this title:

"(1) CHILD.—The term 'child' means an individual under 19 years of age.

"(2) ELDERLY INDIVIDUAL.—The term 'elderly individual' means an individual who has attained retirement age, as defined under section 216(l)(1).

"(3) POVERTY LINE DEFINED.—The term 'poverty line' has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section).

"(4) PREGNANT WOMAN.—The term 'pregnant woman' includes a woman during the 60-day period beginning on the last day of the pregnancy.

"SEC. 2172. TREATMENT OF TERRITORIES.

"Notwithstanding any other requirement of this title, the Secretary may waive or modify any requirement of this title with respect to the medical assistance program for a State other than the 50 States and the District of Columbia, other than a waiver of—

"(1) the applicable Federal medical assistance percentage,

"(2) the limitation on total payments in a fiscal year to the amount of the allotment under section 2121(c), or

"(3) the requirement that payment may be made for medical assistance only with respect to amounts expended by the State for care and services described in section 2171(a) and medically-related services (as defined in section 2112(e)(2)).

"SEC. 2173. DESCRIPTION OF TREATMENT OF INDIAN HEALTH SERVICE FACILITIES.

"In the case of a State in which one or more facilities of the Indian Health Service are located, the MediGrant plan shall include a description of—

"(1) what provision (if any) has been made for payment for items and services furnished by such facilities, and

"(2) the manner in which medical assistance for low-income eligible individuals who are Indians will be provided, as determined by the State in consultation with the appropriate Indian tribes and tribal organizations.

"SEC. 2174. APPLICATION OF CERTAIN GENERAL PROVISIONS.

"The following sections in part A of title XI shall apply to States under this title in the same manner as they applied to a State under title XIX:

"(1) Section 1101(a)(1) (relating to definition of State).

"(2) Section 1116 (relating to administrative and judicial review), but only insofar as consistent with the provisions of part C.

"(3) Section 1124 (relating to disclosure of ownership and related information).

"(4) Section 1126 (relating to disclosure of information about certain convicted individuals).

"(5) Section 1128B(d) (relating to criminal penalties for certain additional charges).

"(6) Section 1132 (relating to periods within which claims must be filed).

"SEC. 2175. MEDIGRANT MASTER DRUG REBATE AGREEMENTS.

"(a) REQUIREMENT FOR MANUFACTURER TO ENTER INTO AGREEMENT.—

"(1) IN GENERAL.—Pursuant to section 2123(f), in order for payment to be made to a State under part C for medical assistance for covered outpatient drugs of a manufacturer, the manufacturer shall enter into and have in effect a MediGrant master rebate agreement described in subsection (b) with the Secretary on behalf of States electing to participate in the agreement.

"(2) COVERAGE OF DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Nothing in this section shall be construed to prohibit a State in its discretion from providing coverage under its MediGrant plan of a covered outpatient drug for which no rebate agreement is in effect under this section.

"(3) EFFECT ON EXISTING AGREEMENTS.—If a State has a rebate agreement in effect with a manufacturer on the date of the enactment of this section which provides for a minimum aggregate rebate equal to or greater than the minimum aggregate rebate which would otherwise be paid under the MediGrant master agreement under this section, at the option of the State—

"(A) such agreement shall be considered to meet the requirements of the MediGrant master rebate agreement, and

"(B) the State shall be considered to have elected to participate in the MediGrant master rebate agreement.

"(4) LIMITATION ON PRICES OF DRUGS PURCHASED BY COVERED ENTITIES.—

"(A) AGREEMENT WITH SECRETARY.—A manufacturer meets the requirements of this paragraph if the manufacturer has entered into an agreement with the Secretary that meets the requirements of section 340B of the Public Health Service Act with respect to covered outpatient drugs purchased by a covered entity on or after the first day of the first month that begins after the date of the enactment of title VI of the Veterans Health Care Act of 1992.

"(B) COVERED ENTITY DEFINED.—In this subsection, the term 'covered entity' means an entity described in section 340B(a)(4) of the Public Health Service Act provided that—

"(i) an entity is licensed by the State to purchase and take possession of covered outpatient drugs and furnishes the drugs to patients at a cost no greater than acquisition plus such dispensing fee as may be allowable under a State pharmaceutical assistance program, and

"(ii) such entity is certified pursuant to section 340B(a)(7) of such Act.

"(C) ESTABLISHMENT OF ALTERNATIVE MECHANISM TO ENSURE AGAINST DUPLICATE DISCOUNTS OR REBATES.—If

the Secretary does not establish a mechanism under section 340B(a)(5)(A) of the Public Health Service Act within 12 months of the date of the enactment of such section, the following requirements shall apply:

"(i) Each covered entity shall inform the single State agency under this title when it is seeking reimbursement from the medicaid plan for medical assistance with respect to a unit of any covered outpatient drug which is subject to an agreement under section 340B(a) of such Act.

"(ii) Each such single State agency shall provide a means by which a covered entity shall indicate on any drug reimbursement claims form (or format, where electronic claims management is used) that a unit of the drug that is the subject of the form is subject to an agreement under section 340B of such Act, and not submit to any manufacturer a claim for a rebate payment under subsection (b) with respect to such a drug.

"(D) EFFECT OF SUBSEQUENT AMENDMENTS.—In determining whether an agreement under subparagraph (A) meets the requirements of section 340B of the Public Health Service Act, the Secretary shall not take into account any amendments to such section that are enacted after the enactment of title VI of the Veterans Health Care Act of 1992.

"(E) DETERMINATION OF COMPLIANCE.—A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 340B of the Public Health Service Act (as in effect immediately after the enactment title VI of the Veterans Health Care Act of 1992, and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after such enactment.

"(b) TERMS OF REBATE AGREEMENT.—

"(1) PERIODIC REBATES.—The MediGrant master rebate agreement under this section shall require the manufacturer to provide, to the MediGrant plan of each State participating in the agreement, a rebate for a rebate period in an amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed after the effective date of the agreement, for which payment was made under the plan for such period. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

"(2) STATE PROVISION OF INFORMATION.—

"(A) STATE RESPONSIBILITY.—Each State participating in the MediGrant master rebate agreement shall report to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength and package size of each covered outpatient drug, for which payment was made under the MediGrant plan

for the period, and shall promptly transmit a copy of such report to the Secretary.

"(B) AUDITS.—A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

"(3) MANUFACTURER PROVISION OF PRICE INFORMATION.—

"(A) IN GENERAL.—Each manufacturer which is subject to the MediGrant master rebate agreement under this section shall report to the Secretary—

"(i) not later than 30 days after the last day of each rebate period under the agreement, on the average manufacturer price (as defined in subsection (i)(1)) and, for single source drugs and innovator multiple source drugs, the manufacturer's best price (as defined in subsection (c)(1)(C)) for each covered outpatient drug for the rebate period under the agreement, and

"(ii) not later than 30 days after the date of entering into an agreement under this section, on the average manufacturer price (as defined in subsection (i)(1)) as of October 1, 1990, for each of the manufacturer's covered outpatient drugs.

"(B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE.—The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $10,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information by the Secretary in connection with a survey under this subparagraph. The provisions of section 1128A (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(C) PENALTIES.—

"(i) FAILURE TO PROVIDE TIMELY INFORMATION.—In the case of a manufacturer which is subject to the MediGrant master rebate agreement that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury. If such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

"(ii) FALSE INFORMATION.—Any manufacturer which is subject to the MediGrant master rebate agreement, or a wholesaler or direct seller, that knowingly provides false information under subparagraph (A) or (B) is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Any such civil money penalty shall be in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(D) CONFIDENTIALITY OF INFORMATION.—Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in section 2123(f) is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler or the prices charged for drugs by such manufacturer or wholesaler, except—

"(i) as the Secretary determines to be necessary to carry out this section,

"(ii) to permit the Comptroller General to review the information provided, and

"(iii) to permit the Director of the Congressional Budget Office to review the information provided.

"(4) LENGTH OF AGREEMENT.—

"(A) IN GENERAL.—The MediGrant master rebate agreement under this section shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

"(B) TERMINATION.—

"(i) BY THE SECRETARY.—The Secretary may provide for termination of the MediGrant master rebate agreement with respect to a manufacturer for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination. Failure of a State to provide any advance notice of such a termination as required by regulation shall not affect the State's right to terminate coverage of the drugs affected by such termination as of the effective date of such termination.

"(ii) BY A MANUFACTURER.—A manufacturer may terminate its participation in the MediGrant master rebate agreement under this section for any reason. Any such termination shall not be effective until the cal-

endar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

"(iii) EFFECTIVENESS OF TERMINATION.—Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

"(iv) NOTICE TO STATES.—In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

"(v) APPLICATION TO TERMINATIONS OF OTHER AGREEMENTS.—The provisions of this subparagraph shall apply to the terminations of master agreements described in section 8126(a) of title 38, United States Code.

"(C) DELAY BEFORE REENTRY.—In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

"(5) SETTLEMENT OF DISPUTES.—

"(A) SECRETARY.—The Secretary shall have the authority to resolve, settle, and compromise disputes regarding the amounts of rebates owed under this section and section 1927.

"(B) STATE.—Each State, with respect to covered outpatient drugs paid for under the State's MediGrant plan, shall have authority, independent of the Secretary' authority under subparagraph (A), to resolve, settle, and compromise disputes regarding the amounts of rebates owed under this section. Any such action shall be deemed to comply with the requirements of this title, and such covered outpatient drugs shall be eligible for payment under the MediGrant plan under this title.

"(C) AMOUNT OF REBATE.—The Secretary shall limit the amount of the rebate payable in any case in which the Secretary determines that, because of unusual circumstances or questionable data, the provisions of subsection (c) result in a rebate amount that is inequitable or otherwise inconsistent with the purposes of this section.

"(c) DETERMINATION OF AMOUNT OF REBATE.—

"(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) IN GENERAL.—Except as provided in paragraph (2), the amount of the rebate specified in this subsection with respect to a State participating in the MediGrant master rebate agreement for a rebate period (as defined in subsection (i)(7)) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

"(i) the total number of units of each dosage form and strength paid for under the State MediGrant plan in the rebate period (as reported by the State); and

"(ii) the greater of—

"(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

"(II) the minimum rebate percentage (specified in subparagraph (B)) of such average manufacturer price,

for the rebate period.

"(B) MINIMUM REBATE PERCENTAGE.—For purposes of subparagraph (A)(ii)(II), the 'minimum rebate percentage' is 15 percent.

"(C) BEST PRICE DEFINED.—For purposes of this section—

"(i) IN GENERAL.—The term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

"(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, United States Code, the Department of Defense, the Public Health Service, or a covered entity described in section 340B(a)(4) of the Public Health Service Act,

"(II) any prices charged under the Federal Supply Schedule of the General Services Administration,

"(III) any prices used under a State pharmaceutical assistance program, and

"(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government.

"(ii) SPECIAL RULES.—The term 'best price'—

"(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section),

"(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package,

"(III) shall not take into account prices that are merely nominal in amount, and

"(IV) shall exclude rebates paid under this section or any other rebates paid to a State participating in the MediGrant master rebate agreement.

"(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—

“(A) IN GENERAL.—The amount of the rebate specified in this subsection with respect to a State participating in the MediGrant master rebate agreement for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of—

“(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the MediGrant plan for the rebate period; and

“(ii) the amount (if any) by which—

“(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

“(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the Consumer Price Index for All Urban Consumers (United States city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.

“(B) TREATMENT OF SUBSEQUENTLY APPROVED DRUGS.—In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting ‘the first full calendar quarter after the day on which the drug was first marketed’ for ‘the calendar quarter beginning July 1, 1990’ and ‘the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed’ for ‘September 1990’.

“(3) REBATE FOR OTHER DRUGS.—

“(A) IN GENERAL.—The amount of the rebate paid to a State participating in the MediGrant master rebate agreement for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

“(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and

“(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the MediGrant plan for the rebate period.

“(B) APPLICABLE PERCENTAGE DEFINED.—For purposes of subparagraph (A)(i), the ‘applicable percentage’ is 11 percent.

“(4) LIMITATION ON AMOUNT OF REBATE TO AMOUNTS PAID FOR CERTAIN DRUGS.—

"(A) IN GENERAL.—Upon request of the manufacturer of a covered outpatient drug, the Secretary shall limit, in accordance with subparagraph (B), the amount of the rebate under this subsection with respect to a dosage form and strength of such drug if the majority of the estimated number of units of such dosage form and strength that are subject to rebates under this section were dispensed to inpatients of nursing facilities.

"(B) AMOUNT OF REBATE.—In the case of a covered outpatient drug subject to subparagraph (A), the amount of the rebate specified in this subsection for a rebate period, with respect to each dosage form and strength of such drug, shall not exceed the amount paid under the MediGrant plan with respect to such dosage form and strength of the drug in the rebate period (without consideration of any dispensing fees paid).

"(5) SUPPLEMENTAL REBATES PROHIBITED.—No rebates shall be required to be paid by manufacturers with respect to covered outpatient drugs furnished to individuals in any State that provides for the collection of such rebates in excess of the rebate amount payable under this section.

"(d) LIMITATIONS ON COVERAGE OF DRUGS BY STATES PARTICIPATING IN MASTER AGREEMENT.—

"(1) PERMISSIBLE RESTRICTIONS.—A State participating in the MediGrant master rebate agreement under this section may—

"(A) subject to prior authorization under its MediGrant plan any covered outpatient drug so long as any such prior authorization program complies with the requirements of paragraph (5); and

"(B) exclude or otherwise restrict coverage under its plan of a covered outpatient drug if—

"(i) the drug is contained in the list referred to in paragraph (2);

"(ii) the drug is subject to such restrictions pursuant to the MediGrant master rebate agreement or any agreement described in subsection (a)(4); or

"(iii) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

"(2) LIST OF DRUGS SUBJECT TO RESTRICTION.—The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted by a State participating in the MediGrant master rebate agreement:

"(A) Agents when used for anorexia, weight loss, or weight gain.

"(B) Agents when used to promote fertility.

"(C) Agents when used for cosmetic purposes or hair growth.

"(D) Agents when used for the symptomatic relief of cough and colds.

"(E) Agents when used to promote smoking cessation.

"(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

"(G) Nonprescription drugs.

"(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

"(I) Barbiturates.

"(J) Benzodiazepines.

"(3) ADDITIONS TO DRUG LISTINGS.—The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2), or their medical uses, which the Secretary has determined to be subject to clinical abuse or inappropriate use.

"(4) REQUIREMENTS FOR FORMULARIES.—A State participating in the MediGrant master rebate agreement may establish a formulary if the formulary meets the following requirements:

"(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State.

"(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with the agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

"(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from the appropriate compendia described in subsection (i)(5)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

"(D) The State MediGrant plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

"(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

"(5) REQUIREMENTS OF PRIOR AUTHORIZATION PROGRAMS.—The MediGrant plan of a State participating in the MediGrant master rebate agreement may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this

section, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (i)(5)) only if the system providing for such approval—

"(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization, and

"(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least a 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

"(6) OTHER PERMISSIBLE RESTRICTIONS.—A State participating in the MediGrant master rebate agreement may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this Act.

"(e) DRUG USE REVIEW.—

"(1) IN GENERAL.—A State participating in the MediGrant master rebate agreement may provide for a drug use review program to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs.

"(2) APPLICATION OF STATE STANDARDS.—Except as provided in subparagraph (B), a State with a drug use review program under this subsection shall establish and operate the program under such standards as it may establish.

"(f) ELECTRONIC CLAIMS MANAGEMENT.—In accordance with chapter 35 of title 44, United States Code (relating to coordination of Federal information policy), the Secretary shall encourage each State to establish, as its principal means of processing claims for covered outpatient drugs under its MediGrant plan, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

"(g) ANNUAL REPORT.—

"(1) IN GENERAL.—Not later than May 1 of each year, the Secretary shall transmit to the Committee on Finance of the Senate, and the Committee on Commerce of the House of Representatives, a report on the operation of this section in the preceding fiscal year.

"(2) DETAILS.—Each report shall include information on—

"(A) ingredient costs paid under this title for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs,

"(B) the total value of rebates received and number of manufacturers providing such rebates,

"(C) the effect of inflation on the value of rebates required under this section,

“(D) trends in prices paid under this title for covered outpatient drugs, and

“(E) Federal and State administrative costs associated with compliance with the provisions of this title.

“(h) EXEMPTION FOR CAPITATED HEALTH CARE ORGANIZATIONS, HOSPITALS, AND NURSING FACILITIES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the requirements of the MediGrant master rebate agreement under this section shall not apply with respect to covered outpatient drugs dispensed by or through—

“(A) a capitated health care organization (as defined in section 2114(c)(1)), or

“(B) a hospital or nursing facility that dispenses covered outpatient drugs using a drug formulary system and bills the State no more than the hospital's or facility's purchasing costs for covered outpatient drugs.

“(2) CONSTRUCTION IN DETERMINING BEST PRICE.—Nothing in paragraph (1) shall be construed as excluding amounts paid by the entities described in such paragraph for covered outpatient drugs from the determination of the best price (as defined in subsection (c)(1)(C)) for such drugs.

“(i) DEFINITIONS.—In the section—

“(1) AVERAGE MANUFACTURER PRICE.—The term ‘average manufacturer price’ means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.

“(2) COVERED OUTPATIENT DRUG.—Subject to the exceptions in paragraph (3), the term ‘covered outpatient drug’ means—

“(A) of those drugs which are treated as prescribed drugs for purposes of section 2171(a)(8), a drug which may be dispensed only upon prescription (except as provided in subparagraph (D)), and—

“(i) which is approved as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act;

“(ii)(I) which was commercially used or sold in the United States before the date of the enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a ‘new drug’ (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

“(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title

21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling;

"(B) a biological product, other than a vaccine which—

"(i) may only be dispensed upon prescription,

"(ii) is licensed under section 351 of the Public Health Service Act, and

"(iii) is produced at an establishment licensed under such section to produce such product;

"(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act; and

"(D) a drug which may be sold without a prescription (commonly referred to as an 'over-the-counter drug'), if the drug is prescribed by a physician (or other person authorized to prescribe under State law).

"(3) LIMITING DEFINITION.—The term 'covered outpatient drug' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under a MediGrant plan as part of payment for the following and not as direct reimbursement for the drug):

"(A) Inpatient hospital services.

"(B) Hospice services.

"(C) Dental services, except that drugs for which the MediGrant plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

"(D) Physicians' services.

"(E) Outpatient hospital services.

"(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

"(G) Other laboratory and x-ray services.

"(H) Renal dialysis services.

Such term also does not include any such drug or product for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used for a medical indication which is not a medically accepted indication. Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C)) for such drug, biological product, or insulin.

"(4) MANUFACTURER.—The term 'manufacturer' means, with respect to a covered outpatient drug, the entity holding legal title to or possession of the National Drug Code number for such drug.

"(5) MEDICALLY ACCEPTED INDICATION.—The term 'medically accepted indication' means any use for a covered outpatient drug which is approved under the Federal Food, Drug,

and Cosmetic Act, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

"(A) American Hospital Formulary Service Drug Information.

"(B) United States Pharmacopeia-Drug Information.

"(C) American Medical Association Drug Evaluations.

"(D) The DRUGDEX Information System.

"(E) The peer-reviewed medical literature.

"(6) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG.—

"(A) DEFINED.—

"(i) MULTIPLE SOURCE DRUG.—The term 'multiple source drug' means, with respect to a rebate period, a covered outpatient drug (not including any drug described in paragraph (2)(D)) for which there are 2 or more drug products which—

"(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations'),

"(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

"(III) are sold or marketed in the State during the period.

"(ii) INNOVATOR MULTIPLE SOURCE DRUG.—The term 'innovator multiple source drug' means a multiple source drug that was originally marketed under an original new drug application or product licensing application approved by the Food and Drug Administration.

"(iii) NONINNOVATOR MULTIPLE SOURCE DRUG.—The term 'noninnovator multiple source drug' means a multiple source drug that is not an innovator multiple source drug.

"(iv) SINGLE SOURCE DRUG.—The term 'single source drug' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application or product licensing application.

"(B) EXCEPTION.—Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity,

"(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence, and

"(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, if the listed product is generally available to the public through retail pharmacies in that State.

"(7) REBATE PERIOD.—The term 'rebate period' means, with respect to an agreement under subsection (a), a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.".

SEC. 7002. TERMINATION OF CURRENT PROGRAM AND TRANSITION.

(a) TERMINATION OF CURRENT PROGRAM; LIMITATION ON MEDICAID PAYMENTS IN FISCAL YEAR 1996.—

(1) REPEAL OF TITLE.—Title XIX of the Social Security Act is repealed effective October 1, 1996, except that the repeal of section 1928 of such Act is effective on the date of the enactment of this Act and the succeeding two sections of such title shall be effective during fiscal year 1996 in the same manner and to the same extent as such sections were effective during fiscal year 1995.

(2) LIMITATION ON OBLIGATION AUTHORITY.—Notwithstanding any other provision of such title—

(A) POST-ENACTMENT, PRE-MEDIGRANT.—Subject to subparagraph (B), the Secretary of Health and Human Services (in this section referred to as the "Secretary") may enter into obligations under such title with any State (as defined for purposes of such title) for expenses incurred after the date of the enactment of this Act and during fiscal year 1996, but not in excess of the obligation allotment for that State for fiscal year 1996 under section 2121(a)(4) of the Social Security Act (as added by section 7001).

(B) NONE AFTER MEDIGRANT.—The Secretary is not authorized to enter into any obligation with any State under title XIX of such Act for expenses incurred on or after the earlier of—

(i) October 1, 1996, or

(ii) the first day of the first quarter on which the State MediGrant plan under title XXI of such Act (as added by section 7001) is first effective.

(C) AGREEMENT.—A State's submission of claims for payment under section 1903 of such Act after the date of the enactment of this Act with respect to which the limitation described in subparagraph (A) applies is deemed to constitute the State's acceptance of the obligation limitation

under such subparagraph (including the formula for computing the amount of such obligation limitation).

(D) EFFECT ON MEDICAL ASSISTANCE.—Effective on the date of the enactment of this section—

(i) except as provided in this paragraph, the Federal Government has no obligation to provide payment with respect to items and services provided under title XIX of the Social Security Act, and

(ii) such title and title XXI of such Act shall not be construed as providing for an entitlement, under Federal law in relation to the Federal Government, in an individual or person (including any provider) at the time of provision or receipt of services.

(3) REQUIREMENT FOR TIMELY SUBMITTAL OF CLAIMS.—No payment shall be made to a State under title XIX of such Act with respect to an obligation incurred before the date of the enactment of this Act, unless the State has submitted to the Secretary, by not later than June 30, 1996, a claim for Federal financial participation for expenses paid by the State with respect to such obligations. Nothing in paragraph (2) shall be construed as affecting the obligation of the Federal Government to pay claims described in the previous sentence.

(b) MEDICAID-TO-MEDIGRANT TRANSITION PROVISIONS.—

(1) Notwithstanding any provision of law, in the case where payment has been made under section 1903(a) of the Social Security Act to a State before October 1, 1995, and for which a disallowance has not been taken as of such date (or, if so taken, has not been completed, including judicial review, by such date), the Secretary of Health and Human Services shall discontinue the disallowance proceeding and, if such disallowance has been taken as of the date of the enactment of this Act, any payment reductions effected shall be rescinded and the payments returned to the State.

(2) The repeal under subsection (a)(1) of section 1928 of the Social Security Act shall not affect the distribution of vaccines purchased and delivered to the States before the date of the enactment of this Act. No vaccine may be purchased after such date by the Federal Government or any State under any contract under section 1928(d) of the Social Security Act.

(3) No judicial or administrative decision rendered regarding requirements imposed under title XIX of the Social Security Act with respect to a State shall have any application to the MediGrant plan of the State title under XXI of such Act. A State may, pursuant to the previous sentence, seek the abrogation or modification of any such decision after the date of termination of the State plan under title XIX of such Act.

(4) No cause of action under title XIX of the Social Security Act which seeks to require a State to establish or maintain minimum payment rates under such title or claim which seeks reimbursement for any period before the date of the enactment of this Act based on the alleged failure of the State to comply with such title and which has not become final as of such date shall be brought or continued.

(5) Section 6408(a)(3) of the Omnibus Budget Reconciliation Act of 1989 (as amended by section 13642 of the Omnibus Budget Reconciliation Act of 1993) and section 2 of Public Law 102–276 (as amended by section 13644 of the Omnibus Budget Reconciliation Act of 1993) are each amended by striking "December 31, 1995" and inserting "October 1, 1996".

(c) ANTI-FRAUD PROVISIONS.—Section 1128(h)(1) of the Social Security Act (42 U.S.C. 1320a–7(h)(1)) is amended by inserting "or a MediGrant plan under title XXI" after "title XIX".

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation, as appropriate, with heads of other Federal agencies and the States (as defined in section 1101(a)(8) of the Social Security Act for purposes of title XIX of such Act), shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of, and amendments made by, this title.

(2) TRANSITIONAL RULE.—Any reference in any provision of law to title XIX of the Social Security Act or any provision thereof shall be deemed to be a reference to such title or provision as in effect on the day before the date of the enactment of this Act.

SEC. 7003. MEDICARE/MEDIGRANT INTEGRATION DEMONSTRATION PROJECT.

(a) DESCRIPTION OF PROJECTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct demonstration projects under this section to demonstrate the manner in which States may use funds from the medicare program under title XVIII of the Social Security Act and the MediGrant program under title XXI of such Act (in this section referred to as the "medicare and MediGrant programs") for the purpose of providing a more cost-effective full continuum of care for delivering services to meet the needs of chronically-ill elderly and disabled beneficiaries who are eligible for items and services under such programs, through integrated systems of care, with an emphasis on case management, prevention, and interventions designed to avoid institutionalization whenever possible. The Secretary shall use funds from the amounts appropriated for the medicare and MediGrant programs to make the payments required under subsection (d)(1).

(2) OPTION TO PARTICIPATE.—A State may not require an individual eligible to receive items and services under the medicare and MediGrant programs to participate in a demonstration project under this section.

(b) ESTABLISHMENT.—The Secretary shall make payments in accordance with subsection (d) for the conduct of demonstration projects that provide for integrated systems of care in accordance with subsection (a). Not more than 10 demonstration projects shall be conducted under this section.

(c) APPLICATIONS.—Each State, or a coalition of States, desiring to conduct a demonstration project under this section shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including an explanation of a plan for evaluating the project. The Secretary shall approve or deny an application not later than 90 days after the receipt of such application.

(d) PAYMENTS.—

(1) IN GENERAL.—For each calendar quarter occurring during a demonstration project conducted under this section, the Secretary shall pay to each entity designated under paragraph (3) an amount equal to the Federal capitated payment rate determined under paragraph (2).

(2) FEDERAL CAPITATED PAYMENT RATE.—The Secretary shall determine the Federal capitated payment rate for purposes of this section based on the anticipated Federal quarterly cost of providing care to chronically-ill elderly and disabled beneficiaries who are eligible for items and services under the medicare and MediGrant programs and who have elected to participate in a demonstration project under this section.

(3) DESIGNATION OF ENTITY.—

(A) IN GENERAL.—Each State, or coalition of States, shall designate entities to directly receive the payments described in paragraph (1).

(B) REQUIREMENT.—A State, or a coalition of States, may not designate an entity under subparagraph (A) unless such entity meets the quality, solvency, and coverage standards applicable to providers of items and services under the medicare and MediGrant programs.

(4) STATE PAYMENTS.—Each State conducting, or in the case of a coalition of States, participating in a demonstration project under this section shall pay to the entities designated under paragraph (3) an amount equal to the product of (A) 100 percent minus the applicable Federal medical assistance percentage (as defined in section 2122(e) of the Social Security Act) for the State, and (B) the expenditures under the project attributable to the MediGrant program for items and services provided to chronically-ill elderly and disabled beneficiaries who have elected to participate in the demonstration.

(5) BUDGET NEUTRALITY.—The aggregate amount of Federal payments to entities designated by a State, or coalition of States, under paragraph (3) for a fiscal year shall not exceed the aggregate amount of such payments that would otherwise have been made under the medicare and MediGrant programs for such fiscal year for items and services provided to beneficiaries under such programs but for the election of such beneficiaries to participate in a demonstration project under this section.

(e) DURATION.—

(1) IN GENERAL.—The demonstration projects conducted under this section shall be conducted for a 5-year period, subject to annual review and approval by the Secretary.

(2) TERMINATION.—The Secretary may, with 90 days' notice, terminate any demonstration project conducted under this

section that is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(f) OVERSIGHT.—The Secretary shall establish quality standards for evaluating and monitoring the demonstration projects conducted under this section. Such quality standards shall include reporting requirements which contain the following:

(1) A description of the demonstration project.

(2) An analysis of beneficiary satisfaction under such project.

(3) An analysis of the quality of the services delivered under the project.

(4) A description of the savings to the MediGrant and medicare programs as a result of the demonstration project.

TITLE VIII—MEDICARE

SEC. 8000. SHORT TITLE OF TITLE; AMENDMENTS AND REFERENCES TO OBRA; TABLE OF CONTENTS OF TITLE.

(a) SHORT TITLE.—This title may be cited as the "Medicare Preservation Act of 1995".

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this title 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 Social Security Act.

(c) REFERENCES TO OBRA.—In this title, the terms "OBRA–1986", "OBRA–1987", "OBRA–1989", "OBRA–1990", and "OBRA–1993" refer to the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239), the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66), respectively.

(d) TABLE OF CONTENTS OF TITLE.—The table of contents of this title is as follows:

Subtitle A—MedicarePlus Program

CHAPTER 1—MEDICAREPLUS PROGRAM

SEC. 8001. ESTABLISHMENT OF MEDICAREPLUS PROGRAM.

(a) IN GENERAL.—Title XVIII is amended by redesignating part C as part D and by inserting after part B the following new part:

"PART C—MEDICAREPLUS PROGRAM

"ELIGIBILITY, ELECTION, AND ENROLLMENT

"SEC. 1851. (a) CHOICE OF MEDICARE BENEFITS THROUGH MEDICAREPLUS PLANS.—

"(1) IN GENERAL.—Subject to the provisions of this section, every MedicarePlus eligible individual (as defined in paragraph (3)) is entitled to elect to receive benefits under this title—

"(A) through the Medicare fee-for-service program under parts A and B, or

"(B) through enrollment in a MedicarePlus plan under this part.

"(2) TYPES OF MEDICAREPLUS PLANS THAT MAY BE AVAILABLE.—A MedicarePlus plan may be any of the following types of plans of health insurance:

"(A) COORDINATED CARE PLANS.—Private coordinated care plans which provide health care services, including health maintenance organization plans and preferred provider organization plans.

"(B) COMBINATION OF HIGH DEDUCTIBLE PLAN AND CONTRIBUTIONS TO HIGH DEDUCTIBLE MEDICARE MSA.—A high deductible plan, as defined in section 1859(b)(2), and a contribution into a High Deductible MedicarePlus medical savings account (MSA).

"(C) PLANS OFFERED BY PROVIDER-SPONSORED ORGANIZATION.—A MedicarePlus plan offered by a provider-sponsored organization, as defined in section 1853(i).

"(D) UNION, TAFT-HARTLEY, AND ASSOCIATION PLANS.—A MedicarePlus organization plan offered by a MedicarePlus organization that is a union sponsor, Taft-Hartley sponsor, or qualified association sponsor, as defined in section 1859(a).

"(E) FEE-FOR-SERVICE PLANS.—Plans that reimburse hospitals, physicians, and other providers on the basis of a privately determined fee schedule or other basis.

"(F) OTHER HEALTH CARE PLANS.—Any other private plan for the delivery of health care items and services that is not described in a previous subparagraph.

"(3) MEDICAREPLUS ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—In this title, subject to subparagraph (B), the term 'MedicarePlus eligible individual' means an individual who is entitled to benefits under part A and enrolled under part B.

"(B) SPECIAL RULE FOR END-STAGE RENAL DISEASE.—Such term shall not include an individual medically determined to have end-stage renal disease, except that an individual who develops end-stage renal disease while enrolled in a MedicarePlus plan may continue to be enrolled in that plan.

"(b) SPECIAL RULES.—

"(1) RESIDENCE REQUIREMENT.—

"(A) IN GENERAL.—Except as the Secretary may otherwise provide, an individual is eligible to elect a MedicarePlus plan offered by a MedicarePlus organization only if the organization serves the geographic area in which the individual resides under the plan.

"(B) CONTINUATION OF ENROLLMENT PERMITTED.—Pursuant to rules specified by the Secretary, the Secretary shall provide that an individual may continue enrollment in a plan, notwithstanding that the individual no longer resides in the service area of the plan, so long as the plan provides benefits for providers located in the area in which the individual resides.

"(2) AFFILIATION REQUIREMENTS FOR CERTAIN PLANS.—

"(A) IN GENERAL.—Subject to subparagraph (B), an individual is eligible to elect a MedicarePlus plan offered by—

"(i) a union sponsor only if (I) the individual is a member of the sponsor and affiliated with the sponsor through an employment relationship with any employer or is the spouse of such a member, and (II) the individual elected under this section a MedicarePlus plan offered by the sponsor during the first enrollment

period in which the individual was eligible to make such election with respect to such sponsor;

"(ii) a Taft-Hartley sponsor only if (I) the individual is entitled to obtain benefits through such plans under the terms of an applicable collective bargaining agreement, and (II) the individual elected under this section a MedicarePlus plan offered by the sponsor during the first enrollment period in which the individual was eligible to make such election with respect to such sponsor; and

"(iii) a qualified association sponsor only if the individual is a member of the association (or is a spouse of such a member).

"(B) LIMITATION ON ENROLLMENT.—Subject to subparagraph (C)—

"(i) a union sponsor may not enroll an individual under this part unless the individual is described in subparagraph (A)(i)(I),

"(ii) a Taft-Hartley sponsor may not enroll an individual under this part unless the individual is described in subparagraph (A)(ii)(I), and

"(iii) a qualified association sponsor may not enroll an individual under this part unless the individual is described in subparagraph (A)(iii).

"(C) LIMITATION ON TERMINATION OF COVERAGE.—A qualified association sponsor offering a MedicarePlus plan to an individual may not terminate coverage of the individual on the basis that the individual is no longer a member of the association except pursuant to a change of election during an open election period occurring on or after the date of the termination of membership.

"(3) SPECIAL RULES FOR UNION, TAFT-HARTLEY, AND QUALIFIED ASSOCIATION SPONSORS.—

"(A) UNIONS.—Subject to subparagraph (D), a union sponsor (as defined in section 1859(a)(5)) shall limit eligibility of enrollees under this part for MedicarePlus plans it offers to individuals who are members of the sponsor and affiliated with the sponsor through an employment relationship with any employer or are the spouses of such members.

"(B) TAFT-HARTLEY SPONSORS.—Subject to subparagraph (D), a MedicarePlus organization that is a Taft-Hartley sponsor (as defined in section 1859(a)(4)) shall limit eligibility of enrollees under this part for MedicarePlus plans it offers to individuals who are entitled to obtain benefits through such plans under the terms of an applicable collective bargaining agreement.

"(C) QUALIFIED ASSOCIATION SPONSORS.—

"(i) IN GENERAL.—Subject to subparagraph (D), a MedicarePlus organization that is a qualified association sponsor (as defined in section 1859(a)(3)) shall limit eligibility of individuals under this part for plans it offers to individuals who are members of the association (or who are spouses of such individuals).

"(ii) LIMITATION ON TERMINATION OF COVERAGE.—Such a qualifying association sponsor offering a MedicarePlus plan to an individual may not terminate coverage of the individual on the basis that the individual is no longer a member of the association except pursuant to a change of election during an open election period occurring on or after the date of the termination of membership.

"(D) LIMITATION.—Rules of eligibility to carry out the previous subparagraphs of this paragraph shall not have the effect of denying eligibility to individuals on the basis of health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability.

"(E) NO REELECTION AFTER DISENROLLMENT FOR CERTAIN PLANS.—An individual is not eligible to elect a MedicarePlus plan offered by a MedicarePlus organization that is a union sponsor or a Taft-Hartley sponsor if the individual previously had elected a MedicarePlus plan offered by the organization and had subsequently discontinued election of such a plan offered by the organization.

"(4) SPECIAL RULE FOR CERTAIN INDIVIDUALS COVERED UNDER FEHBP.—An individual who is enrolled in a health benefit plan under chapter 89 of title 5, United States Code, is not eligible to enroll in a high deductible plan until such time as the Director of the Office of Management and Budget certifies to the Secretary that the Office of Personnel Management has adopted policies which will ensure that the enrollment of such individuals in such plans will not result in increased expenditures for the Federal Government for health benefit plans under such chapter.

"(c) PROCESS FOR EXERCISING CHOICE.—

"(1) IN GENERAL.—The Secretary shall establish a process through which elections described in subsection (a) are made and changed, including the form and manner in which such elections are made and changed. Such elections shall be made or changed only during coverage election periods specified under subsection (e) and shall become effective as provided in subsection (f).

"(2) EXPEDITED IMPLEMENTATION.—The Secretary shall establish the process of electing coverage under this section during the transition period (as defined in subsection (e)(1)(B)) in such an expedited manner as will permit such an election for MedicarePlus plans in an area as soon as such plans become available in that area.

"(3) COORDINATION THROUGH MEDICAREPLUS ORGANIZATIONS.—

"(A) ENROLLMENT.—Such process shall permit an individual who wishes to elect a MedicarePlus plan offered by a MedicarePlus organization to make such election through the filing of an appropriate election form with the organization.

"(B) DISENROLLMENT.—Such process shall permit an individual, who has elected a MedicarePlus plan offered by a MedicarePlus organization and who wishes to terminate *such election, to terminate such election through the filing of an appropriate election form with the organization.*

"(4) DEFAULT.—

"(A) INITIAL ELECTION.—

"(i) IN GENERAL.—Subject to clause (ii), an individual who fails to make an election during an initial election period under subsection (e)(1) is deemed to have chosen the Medicare fee-for-service program option.

"(ii) SEAMLESS CONTINUATION OF COVERAGE.—The Secretary shall establish procedures under which individuals who are enrolled with a MedicarePlus organization at the time of the initial election period and who fail to elect to receive coverage other than through the organization are deemed to have elected the MedicarePlus plan offered by the organization (or, if the organization offers more than one such plan, the MedicarePlus plan offered by the organization with the lowest net monthly premium).

"(B) CONTINUING PERIODS.—An individual who has made (or is deemed to have made) an election under this section is considered to have continued to make such election until such time as—

"(i) the individual changes the election under this section, or

"(ii) a MedicarePlus plan is discontinued, if the individual had elected such plan at the time of the discontinuation.

"(d) PROVIDING INFORMATION TO PROMOTE INFORMED CHOICE.—

"(1) IN GENERAL.—The Secretary shall provide for activities under this subsection to broadly disseminate information to medicare beneficiaries (and prospective medicare beneficiaries) on the coverage options provided under this section in order to promote an active, informed selection among such options.

"(2) PROVISION OF NOTICE.—

"(A) OPEN SEASON NOTIFICATION.—At least 15 days before the beginning of each annual, coordinated election period, the Secretary shall mail to each MedicarePlus eligible individual residing in an area the following:

"(i) GENERAL ELECTION INFORMATION AND INFORMATION ABOUT MEDICARE FEE-FOR-SERVICE PROGRAM.—The general information regarding election, benefits coverage, and procedures described in paragraph (3).

"(ii) LIST OF PLANS AND COMPARISON OF PLAN OPTIONS.—A list identifying the MedicarePlus plans that are (or will be) available to residents of the area (and their service areas) and information, described in paragraph (4) and in comparative form, concerning such plans.

"(iii) MEDICAREPLUS MONTHLY CAPITATION RATE.—The amount of the monthly MedicarePlus capitation rate for the area.

"(iv) ADDITIONAL INFORMATION.—Any other information that the Secretary determines will assist the individual in making the election under this section.

The mailing of such information shall be coordinated with the mailing of any annual notice under section 1804.

"(B) NOTIFICATION TO NEWLY MEDICAREPLUS ELIGIBLE INDIVIDUALS.—To the extent practicable, the Secretary shall, not later than 2 months before the beginning of the initial MedicarePlus enrollment period for an individual described in subsection (e)(1)(A), mail to the individual the information described in subparagraph (A).

"(C) FORM.—The information disseminated under this paragraph shall be written and formatted in the most easily understandable manner possible.

"(D) PERIODIC UPDATING.—The information described in subparagraph (A) shall be updated on at least an annual basis to reflect changes in the availability of MedicarePlus plans and the benefits and monthly premiums (and net monthly premiums) for such plans.

"(3) GENERAL ELECTION INFORMATION AND INFORMATION ABOUT MEDICARE FEE-FOR-SERVICE PROGRAM.—General information under this paragraph, with respect to coverage under this part during a year, shall include the following:

"(A) BENEFITS.—A general description of the benefits covered (and not covered) under the medicare fee-for-service program under parts A and B, including—

"(i) covered items and services, and

"(ii) beneficiary cost sharing, such as deductibles, coinsurance, and copayment amounts, and the beneficiary liability for balance billing.

"(B) PART B PREMIUM.—The part B premium rates that will be charged for part B coverage.

"(C) ELECTION PROCEDURES.—Information and instructions on how to exercise election options under this section.

"(D) PROCEDURAL RIGHTS.—The general description of procedural rights (including grievance procedures) of beneficiaries under the medicare fee-for-service program and the MedicarePlus program.

"(E) RIGHT OF ORGANIZATION TO TERMINATE CONTRACT.—The right of each MedicarePlus organization by law to terminate or refuse to renew its contract and the effect the termination or nonrenewal of its contract may have on individuals enrolled with the MedicarePlus plan under this part.

"(F) USE OF 911 EMERGENCY NUMBER.—A statement that the use of the 911 emergency telephone number is appropriate in emergency situations and an explanation of what constitutes an emergency situation.

"(4) INFORMATION COMPARING PLAN OPTIONS.—Information under this paragraph, with respect to a MedicarePlus plan for a year, shall include the following:

"(A) BENEFITS.—The benefits covered under the plan, including covered items and services beyond those provided under the medicare fee-for-service program, any reductions

in beneficiary cost sharing, and any maximum limitations on out-of-pocket losses.

"(B) PREMIUMS.—The monthly premium (and net monthly premium, including any rebate) for the plan.

"(C) QUALITY.—(i) To the extent available, quality indicators for the benefits under the plan (in comparison with quality indicators under the Medicare fee-for-service program under parts A and B in the area involved), including—

"(I) disenrollment rates for medicare enrollees electing to receive benefits through the plan for the previous 2 years (excluding disenrollment due to death or moving outside the plan's service area),

"(II) information on medicare enrollee satisfaction and health outcomes, and

"(III) whether the plan is out of compliance with any requirements of this part (as determined by the Secretary).

"(D) SUPPLEMENTAL COVERAGE OPTIONS.—Whether the organization offering the plan offers optional supplemental coverage.

"(5) MAINTAINING A TOLL-FREE NUMBER.—The Secretary shall maintain a toll-free number for inquiries regarding MedicarePlus options and the operation of part C in all areas in which MedicarePlus plans are offered.

"(6) USE OF NONFEDERAL ENTITIES.—The Secretary shall, to the maximum extent feasible, enter into contracts with appropriate non-Federal entities to carry out activities under this subsection.

"(7) PROVISION OF INFORMATION.—A MedicarePlus organization shall provide the Secretary with such information on the organization and each MedicarePlus plan it offers as may be required for the preparation of the information referred to in paragraph (2)(A).

"(e) COVERAGE ELECTION PERIODS.—

"(1) INITIAL CHOICE UPON ELIGIBILITY TO MAKE ELECTION.—

"(A) IN GENERAL.—In the case of an individual who first becomes entitled to benefits under part A and enrolled under part B after the beginning of the transition period (as defined in subparagraph (B)), the individual shall make the election under this section during a period (of a duration and beginning at a time specified by the Secretary) at the first time the individual both is entitled to benefits under part A and enrolled under part B. Such period shall be specified in a manner so that, in the case of an individual who elects a MedicarePlus plan during the period, coverage under the plan becomes effective as of the first date on which the individual may receive such coverage.

"(B) TRANSITION PERIOD DEFINED.—In this subsection, the term 'transition period' means, with respect to an individual in an area, the period beginning on the first day of the first month in which a MedicarePlus plan is first made available to individuals in the area and ending with the

month preceding the beginning of the first annual, coordinated election period under paragraph (3).

"(2) DURING TRANSITION PERIOD.—Subject to paragraph (6)—

"(A) CONTINUOUS OPEN ENROLLMENT INTO A MEDICAREPLUS OPTION.—During the transition period, a MedicarePlus eligible individual who has elected the Medicare fee-for-service program option described in subsection (a)(1)(A) may change such election to a MedicarePlus option described in subsection (a)(1)(B) at any time.

"(B) OPEN DISENROLLMENT BEFORE END OF TRANSITION PERIOD.—

"(i) IN GENERAL.—During the transition period, an individual who has elected a MedicarePlus option described in subsection (a)(1)(B) for a MedicarePlus plan may change such election to another MedicarePlus plan or to the Medicare fee-for-service program option described in subsection (a)(1)(A).

"(ii) SPECIAL RULE.—During the transition period, an individual who has elected a high deductible plan may not change such election to a MedicarePlus plan that is not a high deductible plan unless the individual has had such election in effect for 12 consecutive months.

"(3) ANNUAL, COORDINATED ELECTION PERIOD.—

"(A) IN GENERAL.—Subject to paragraph (5), each individual who is eligible to make an election under this section may change such election during an annual, coordinated election period.

"(B) ANNUAL, COORDINATED ELECTION PERIOD.—For purposes of this section, the term 'annual, coordinated election period' means, with respect to a calendar year (beginning with 1998), the month of October before such year.

"(C) MEDICAREPLUS HEALTH FAIR DURING OCTOBER, 1996.—In the month of October, 1996, the Secretary shall provide for a nationally coordinated educational and publicity campaign to inform MedicarePlus eligible individuals about such plans and the election process provided under this section (including the annual, coordinated election periods that occur in subsequent years).

"(4) SPECIAL 90-DAY DISENROLLMENT OPTION.—

"(A) IN GENERAL.—In the case of the first time an individual elects any MedicarePlus plan (other than a high deductible plan) offered by a particular MedicarePlus organization under this section, the individual may change such election through the filing of an appropriate notice during the 90-day period beginning on the first day on which the individual's coverage under the MedicarePlus plan under such option becomes effective.

"(B) LIMITATION.—Subparagraph (A)—

"(i) shall only apply once for an individual with respect to any particular organization, and

"(ii) may not apply more than twice for any individual in a calendar year.

"(C) EFFECT OF DISCONTINUATION OF ELECTION.—An individual who discontinues an election under subparagraph (A) may, during the period specified by the Secretary, make a new election under this subsection (a) (or, in the absence of such an election, is deemed at the time of such discontinuation to have elected the Medicare fee-for-service program option described in subsection (a)(1)(A)).

"(5) SPECIAL ELECTION PERIODS.—An individual may discontinue an election of a MedicarePlus plan offered by a MedicarePlus organization other than during an annual, coordinated election period and make a new election under this section if—

"(A) the organization's or plan's certification under part C has been terminated or the organization has terminated or otherwise discontinued providing the plan;

"(B) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances (specified by the Secretary, but not including termination of membership in a qualified association in the case of a plan offered by a qualified association sponsor or termination of the individual's enrollment on the basis described in clause (i) or (ii) section 1851(g)(3)(B));

"(C) the individual demonstrates (in accordance with guidelines established by the Secretary) that—

"(i) the organization offering the plan substantially violated a material provision of the organization's contract under part C in relation to the individual and the plan; or

"(ii) the organization (or an agent or other entity acting on the organization's behalf) materially misrepresented the plan's provisions in marketing the plan to the individual; or

"(D) the individual meets such other conditions as the Secretary may provide.

"(6) SPECIAL RULE FOR HIGH DEDUCTIBLE PLANS.—Notwithstanding the previous provisions of this subsection, an individual may elect a high deductible plan only during an annual, coordinated election period described in paragraph (3)(B) or during the month of October, 1996.

"(f) EFFECTIVENESS OF ELECTIONS.—

"(1) DURING INITIAL COVERAGE ELECTION PERIOD.—An election of coverage made during the initial coverage election period under subsection (e)(1)(A) shall take effect upon the date the individual becomes entitled to benefits under part A and enrolled under part B, except as the Secretary may provide (consistent with section 1838) in order to prevent retroactive coverage.

"(2) DURING TRANSITION; 90-DAY DISENROLLMENT OPTION.—An election of coverage made under subsection (e)(2) and an election to discontinue a MedicarePlus option under subsection (e)(4) at any time shall take effect with the first calendar month following the date on which the election is made.

"(3) ANNUAL, COORDINATED ELECTION PERIOD AND HIGH DEDUCTIBLE PLAN ELECTION.—An election of coverage made dur-

ing an annual, coordinated election period (as defined in subsection (e)(3)(B)) in a year or for a high deductible plan shall take effect as of the first day of the following year.

"(4) OTHER PERIODS.—An election of coverage made during any other period under subsection (e)(5) shall take effect in such manner as the Secretary provides in a manner consistent (to the extent practicable) with protecting continuity of health benefit coverage.

"(g) GUARANTEED ISSUE AND RENEWAL.—

"(1) IN GENERAL.—Except as provided in this subsection, a MedicarePlus organization shall provide that at any time during which elections are accepted under this section with respect to a MedicarePlus plan offered by the organization, the organization will accept without restrictions individuals who are eligible to make such election.

"(2) PRIORITY.—If the Secretary determines that a MedicarePlus organization, in relation to a MedicarePlus plan it offers, has a capacity limit and the number of MedicarePlus eligible individuals who elect the plan under this section exceeds the capacity limit, the organization may limit the election of individuals of the plan under this section but only if priority in election is provided—

"(A) first to such individuals as have elected the plan at the time of the determination, and

"(B) then to other such individuals in such a manner that does not discriminate among the individuals (who seek to elect the plan) on a basis described in section 1852(b).

The preceding sentence shall not apply if it would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the medicare population in the service area of the plan.

"(3) LIMITATION ON TERMINATION OF ELECTION.—

"(A) IN GENERAL.—Subject to subparagraph (B), a MedicarePlus organization may not for any reason terminate the election of any individual under this section for a MedicarePlus plan it offers.

"(B) BASIS FOR TERMINATION OF ELECTION.—A MedicarePlus organization may terminate an individual's election under this section with respect to a MedicarePlus plan it offers if—

"(i) any net monthly premiums required with respect to such plan are not paid on a timely basis (consistent with standards under section 1856 that provide for a grace period for late payment of net monthly premiums),

"(ii) the individual has engaged in disruptive behavior (as specified in such standards), or

"(iii) the plan is terminated with respect to all individuals under this part.

Any individual whose election is so terminated is deemed to have elected the Medicare fee-for-service program option described in subsection (a)(1)(A).

"(C) LIMITATION ON TERMINATION OF COVERAGE.—A qualified association sponsor offering a MedicarePlus plan

to an individual may not terminate coverage of the individual on the basis that the individual is no longer a member of the association except pursuant to a change of election during an open election period occurring on or after the date of the termination of membership.

"(D) ORGANIZATION OBLIGATION WITH RESPECT TO ELECTION FORMS.—Pursuant to a contract under section 1857, each MedicarePlus organization receiving an election form under subsection (c)(3) shall transmit to the Secretary (at such time and in such manner as the Secretary may specify) a copy of such form or such other information respecting the election as the Secretary may specify.

"(h) APPROVAL OF MARKETING MATERIALS.—

"(1) SUBMISSION.—No marketing materials may be distributed by a MedicarePlus organization to (or for the use of) MedicarePlus eligible individuals unless—

"(A) at least 45 days before the date of distribution the organization has submitted the material to the Secretary for review, and

"(B) the Secretary has not disapproved the distribution of such material.

"(2) REVIEW.—The standards established under section 1856 shall include guidelines for the review of all such material submitted and under such guidelines the Secretary shall disapprove such material if the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

"(3) DEEMED APPROVAL (1-STOP SHOPPING).—In the case of material that is submitted under paragraph (1)(A) to the Secretary or a regional office of the Department of Health and Human Services and the Secretary or the office has not disapproved the distribution of marketing materials under paragraph (1)(B) with respect to a MedicarePlus plan in an area, the Secretary is deemed not to have disapproved such distribution in all other areas covered by the plan and organization.

"(4) PROHIBITION OF CERTAIN MARKETING PRACTICES.—Each MedicarePlus organization shall conform to fair marketing standards in relation to MedicarePlus plans offered under this part, included in the standards established under section 1856. Such standards shall include a prohibition against an organization (or agent of such an organization) completing any portion of any election form used to carry out elections under this section on behalf of any individual.

"(i) EFFECT OF ELECTION OF MEDICAREPLUS PLAN OPTION.—Subject to section 1852(a)(5)—

"(1) payments under a contract with a MedicarePlus organization under section 1854(a) with respect to an individual electing a MedicarePlus plan offered by the organization shall be instead of the amounts which (in the absence of the contract) would otherwise be payable under parts A and B for items and services furnished to the individual, and

"(2) subject to subsections (e) and (f) of section 1854, only the MedicarePlus organization shall be entitled to receive payments from the Secretary under this title for services furnished to the individual.

"(j) ADMINISTRATION.—

"(1) IN GENERAL.—This part and section 1876 shall be administered through an operating division (A) that is established or identified by the Secretary and is in the Department of Health and Human Services, (B) that is separate from the Health Care Financing Administration, and (C) the primary function of which is the administration of this part and such section. The director of such division shall be of equal pay and rank to that of the individual responsible for overall administration of parts A and B.

"(2) TRANSFER AUTHORITY.—The Secretary shall transfer such personnel, administrative support systems, assets, records, funds, and other resources in the Health Care Financing Administration to the operating division referred to in paragraph (1) as are used in the administration of section 1876 and as may be required to implement the provisions of this part promptly and efficiently.

"BENEFITS AND BENEFICIARY PROTECTIONS

"SEC. 1852. (a) BASIC BENEFITS.—

"(1) IN GENERAL.—Except as provided in section 1859(b)(2) for high deductible plans, each MedicarePlus plan shall provide to members enrolled under this part, through providers and other persons that meet the applicable requirements of this title and part A of title XI—

"(A) those items and services for which benefits are available under parts A and B to individuals residing in the area served by the plan, and

"(B) additional health services as the Secretary may approve.

The Secretary shall approve any such additional health care services which the plan proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by MedicarePlus eligible individuals with the plan.

"(2) SATISFACTION OF REQUIREMENT.—A MedicarePlus plan (other than a high deductible plan) offered by a MedicarePlus organization satisfies paragraph (1)(A) with respect to benefits for items and services if the following requirements are met:

"(A) FEE FOR SERVICE PROVIDERS.—In the case of benefits furnished through a provider that does not have a contract with the organization, the plan provides for at least the dollar amount of payment for such items and services as would otherwise be provided under parts A and B.

"(B) PARTICIPATING PROVIDERS.—In the case of benefits furnished through a provider that has such a contract, the individual's liability for payment for such items and services does not exceed (after taking into account any deductible, which does not exceed any deductible under parts A and B) the lesser of the following:

"(i) INDIVIDUAL'S LIABILITY UNDER MEDICARE FEE-FOR-SERVICE PROGRAM.—The amount of the liability that the individual would have had (based on the pro-

vider being a participating provider) if the individual had not elected coverage under a MedicarePlus plan.

"(ii) MEDICARE COINSURANCE APPLIED TO PLAN PAYMENT RATES.—The applicable coinsurance or copayment rate (that would have applied under the Medicare fee-for-service program option described in section 1851(a)(1)(A)) of the payment rate provided under the contract.

"(3) SUPPLEMENTAL OPTIONAL BENEFITS.—Each MedicarePlus organization may offer under a MedicarePlus plan optional supplemental benefits to each individual enrolled in the plan under this part for an additional premium amount. If the supplemental benefits are offered only to individuals enrolled in the sponsor's plan under this part, the additional premium amount shall be the same for all enrolled individuals in the MedicarePlus payment area. Such benefits may be marketed and sold by the MedicarePlus organization outside of the enrollment process described in section 1851(c).

"(4) ORGANIZATION AS SECONDARY PAYER.—Notwithstanding any other provision of law, a MedicarePlus organization may (in the case of the provision of items and services to an individual under a MedicarePlus plan under circumstances in which payment under this title is made secondary pursuant to section 1862(b)(2)) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such a law, plan, or policy—

"(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

"(B) such individual to the extent that the individual has been paid under such law, plan, or policy for such services.

"(5) NATIONAL COVERAGE DETERMINATIONS.—If there is a national coverage determination made in the period beginning on the date of an announcement under section 1854(b) and ending on the date of the next announcement under such section and the Secretary projects that the determination will result in a significant change in the costs to a MedicarePlus organization of providing the benefits that are the subject of such national coverage determination and that such change in costs was not incorporated in the determination of the annual MedicarePlus capitation rate under section 1854 included in the announcement made at the beginning of such period—

"(A) such determination shall not apply to contracts under this part until the first contract year that begins after the end of such period, and

"(B) if such coverage determination provides for coverage of additional benefits or coverage under additional circumstances, section 1851(i) shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.

“(b) ANTIDISCRIMINATION.—A MedicarePlus organization may not deny, limit, or condition the coverage or provision of benefits under this part based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual. A MedicarePlus organization shall notify each enrollee under this part of provisions of this subsection at the time of the individual’s enrollment.

“(c) DETAILED DESCRIPTION OF PLAN PROVISIONS.—A MedicarePlus organization shall disclose, in clear, accurate, and standardized form to each enrollee with a MedicarePlus plan offered by the organization under this part at the time of enrollment and at least annually thereafter, the following information regarding such plan:

“(1) SERVICE AREA.—The plan’s service area.

“(2) BENEFITS.—Benefits under the plan offered, including information described in section 1851(d)(3)(A) and exclusions from coverage and, if it is a high deductible plan, a comparison of benefits under such a plan with benefits under other MedicarePlus plans.

“(3) ACCESS.—The number, mix, and distribution of participating providers.

“(4) OUT-OF-AREA COVERAGE.— Out-of-area coverage provided by the plan.

“(5) EMERGENCY COVERAGE.—Coverage of emergency services and urgently needed care.

“(6) OPTIONAL SUPPLEMENTAL COVERAGE.— Optional supplemental coverage available from the organization offering the plan, including—

“(A) supplemental items and services covered, and

“(B) the premium price for the optional supplemental benefits.

“(7) PRIOR AUTHORIZATION RULES.—Rules regarding prior authorization or other review requirements that could result in nonpayment.

“(8) PLAN GRIEVANCE PROCEDURES.— Any plan-specific appeal or grievance rights and procedures.

“(9) QUALITY ASSURANCE PROGRAM.—A description of the organization’s quality assurance program under subsection (e).

“(d) ACCESS TO SERVICES.—

“(1) IN GENERAL.—A MedicarePlus organization offering a MedicarePlus plan may restrict the providers from whom the benefits under the plan are provided so long as—

“(A) the organization makes such benefits available and accessible to each individual electing the plan within the plan service area with reasonable promptness and in a manner which assures continuity in the provision of benefits;

“(B) when medically necessary the organization makes such benefits available and accessible 24 hours a day and 7 days a week;

“(C) the plan provides for reimbursement with respect to services which are covered under subparagraphs (A) and (B) and which are provided to such an individual other than through the organization, if—

"(i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition, and

"(ii) it was not reasonable given the circumstances to obtain the services through the organization;

"(D) the organization provides access to appropriate providers, including credentialed specialists, for medically necessary treatment and services, and

"(E) coverage is provided for emergency services (as defined in paragraph (3)) without regard to prior authorization or the emergency care provider's contractual relationship with the organization.

"(2) PROTECTION OF ENROLLEES FOR CERTAIN EMERGENCY SERVICES.—

"(A) PARTICIPATING PROVIDERS.—In the case of emergency services described in subparagraph (C) which are furnished by a participating physician or provider of services to an individual enrolled with a MedicarePlus organization under this section, the applicable participation agreement is deemed to provide that the physician or provider of services will accept as payment in full from the organization for such emergency services described in subparagraph (C) the amount that would be payable to the physician or provider of services under part B and from the individual under such part, if the individual were not enrolled with such an organization under this part.

"(B) NONPARTICIPATING PROVIDERS.—In the case of emergency services described in subparagraph (C) which are furnished by a nonparticipating physician, the limitations on actual charges for such services otherwise applicable under part B (to services furnished by individuals not enrolled with a MedicarePlus organization under this section) shall apply in the same manner as such limitations apply to services furnished to individuals not enrolled with such an organization.

"(C) EMERGENCY SERVICES DESCRIBED.—The emergency services described in this subparagraph are emergency services which are furnished to an enrollee of a MedicarePlus organization under this part by a physician or provider of services that is not under a contract with the organization.

"(D) EXCEPTION FOR UNRESTRICTED FEE-FOR-SERVICE PLANS.—The previous provisions of this paragraph shall not apply in the case of a MedicarePlus organization in relation to a MedicarePlus unrestricted fee-for-service plan (as defined in section 1859(b)(3)).

"(3) DEFINITION OF EMERGENCY SERVICES.—In this subsection, the term 'emergency services' means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that—

"(A) are furnished by an appropriate source other than the organization,

"(B) are needed immediately because of an injury or sudden illness, and

“(C) are needed because the time required to reach the organization’s providers or suppliers would have meant risk of serious damage to the patient’s health.

“(e) QUALITY ASSURANCE PROGRAM.—

“(1) IN GENERAL.—Each MedicarePlus 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 individuals enrolled with MedicarePlus plans of the organization.

“(2) ELEMENTS OF PROGRAM.—The quality assurance program shall—

“(A) stress health outcomes;

“(B) provide for the establishment of written protocols for utilization review, based on current standards of medical practice;

“(C) provide review by physicians and other health care professionals of the process followed in the provision of such health care services;

“(D) monitor and evaluate high volume and high risk services and the care of acute and chronic conditions;

“(E) evaluate the continuity and coordination of care that enrollees receive;

“(F) have mechanisms to detect both underutilization and overutilization of services;

“(G) after identifying areas for improvement, establish or alter practice parameters;

“(H) take action to improve quality and assesses the effectiveness of such action through systematic follow-up;

“(I) make available information on quality and outcomes measures to facilitate beneficiary comparison and choice of health coverage options (in such form and on such quality and outcomes measures as the Secretary determines to be appropriate); and

“(J) be evaluated on an ongoing basis as to its effectiveness.

“(3) EXTERNAL REVIEW.—Each MedicarePlus organization shall, for each MedicarePlus plan it operates, have an agreement with an independent quality review and improvement organization approved by the Secretary.

“(4) EXCEPTION FOR UNRESTRICTED FEE-FOR-SERVICE PLANS.—Paragraphs (1) and (3) and subsection (h)(2) (relating to maintaining medical records) shall not apply in the case of a MedicarePlus organization in relation to a MedicarePlus unrestricted fee-for-service plan.

“(5) TREATMENT OF ACCREDITATION.—The Secretary shall provide that a MedicarePlus organization is deemed to meet the requirements of paragraphs (1) through (3) of this subsection and subsection (h) (relating to confidentiality and accuracy of medical records) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization meets standards that are no less stringent than the standards established under section 1856 to carry out this subsection and such subsection.

"(f) COVERAGE DETERMINATIONS.—

"(1) DECISIONS ON NONEMERGENCY CARE.—A MedicarePlus organization shall make determinations regarding authorization requests for nonemergency care on a timely basis, depending on the urgency of the situation.

"(2) APPEALS.—

"(A) IN GENERAL.—Appeals from a determination of an organization denying coverage shall be decided within 30 days of the date of receipt of medical information, but not later than 60 days after the date of the decision.

"(B) PHYSICIAN DECISION ON CERTAIN APPEALS.—Appeal decisions relating to a determination to deny coverage based on a lack of medical necessity shall be made only by a physician.

"(C) EMERGENCY CASES.—Appeals from such a determination involving a life-threatening or emergency situation shall be decided on an expedited asis.

"(g) GRIEVANCES AND APPEALS.—

"(1) GRIEVANCE MECHANISM.—Each MedicarePlus organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and enrollees with MedicarePlus plans of the organization under this part.

"(2) APPEALS.—An enrollee with a MedicarePlus plan of a MedicarePlus organization under this part who is dissatisfied by reason of the enrollee's failure to receive any health service to which the enrollee believes the enrollee is entitled and at no greater charge than the enrollee believes the enrollee is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 205(b), and in any such hearing the Secretary shall make the organization a party. If the amount in controversy is $1,000 or more, the individual or organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 205(g), and both the individual and the organization shall be entitled to be parties to that judicial review. In applying sections 205(b) and 205(g) as provided in this subparagraph, and in applying section 205(l) thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

"(3) INDEPENDENT REVIEW OF CERTAIN COVERAGE DENIALS.—The Secretary shall contract with an independent, outside entity to review and resolve appeals of denials of coverage related to urgent or emergency services with respect to MedicarePlus plans.

"(4) COORDINATION WITH SECRETARY OF LABOR.—The Secretary shall consult with the Secretary of Labor so as to ensure that the requirements of this subsection, as they apply in the case of grievances referred to in paragraph (1) to which section 503 of the Employee Retirement Income Security Act of 1974 applies, are applied in a manner consistent with the requirements

of such section 503, so long as such requirements provide at least as much protection for beneficiaries as would apply if this paragraph did not apply.

"(h) CONFIDENTIALITY AND ACCURACY OF ENROLLEE RECORDS.—Each MedicarePlus organization shall establish procedures—

"(1) to safeguard the privacy of individually identifiable enrollee information, and

"(2) to maintain accurate and timely medical records for enrollees.

"(i) INFORMATION ON ADVANCE DIRECTIVES.—Each MedicarePlus organization shall meet the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).

"(j) RULES REGARDING PHYSICIAN PARTICIPATION.—

"(1) PROCEDURES.—Each MedicarePlus organization shall establish reasonable procedures relating to the participation (under an agreement etween a physician and the organization) of physicians under MedicarePlus plans offered by the organization under this part. Such procedures shall include—

"(A) providing notice of the rules regarding participation,

"(B) providing written notice of participation decisions that are adverse to physicians, and

"(C) providing a process within the organization for appealing adverse decisions, including the presentation of information and views of the physician regarding such decision.

"(2) CONSULTATION IN MEDICAL POLICIES.—A MedicarePlus organization shall consult with physicians who have entered into participation agreements with the organization regarding the organization's medical policy, quality, and medical management procedures.

"(3) LIMITATIONS ON PHYSICIAN INCENTIVE PLANS.—

"(A) IN GENERAL.—No MedicarePlus organization may operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

"(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

"(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

"(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive

services from the physician or the physician group, and

"(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

"(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

"(B) PHYSICIAN INCENTIVE PLAN DEFINED.—In this paragraph, the term 'physician incentive plan' means any compensation arrangement between a MedicarePlus organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization under this part.

"(4) LIMITATION ON PROVIDER INDEMNIFICATION.—A MedicarePlus organization may not provide (directly or indirectly) for a provider (or group of providers) to indemnify the organization against any liability resulting from a civil action brought by or on behalf of an enrollee under this part for any damage caused to an enrollee with a MedicarePlus plan of the organization by the organization's denial of medically necessary care.

"(5) EXCEPTION FOR UNRESTRICTED FEE-FOR-SERVICE PLANS.—The previous provisions of this subsection shall not apply in the case of a MedicarePlus organization in relation to a MedicarePlus unrestricted fee-for-service plan.

"ORGANIZATIONAL AND FINANCIAL REQUIREMENTS FOR MEDICAREPLUS ORGANIZATIONS; PROVIDER-SPONSORED ORGANIZATIONS

"SEC. 1853. (a) ORGANIZED AND LICENSED UNDER STATE LAW.—

"(1) IN GENERAL.—A MedicarePlus organization shall be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a MedicarePlus plan.

"(2) EXCEPTION FOR CERTAIN UNION SPONSORS AND TAFT-HARTLEY SPONSORS.—Paragraph (1) shall not apply to a MedicarePlus organization that is a union sponsor or Taft-Hartley sponsor.

"(3) EXCEPTION FOR QUALIFIED ASSOCIATIONS SPONSOR.—Paragraph (1) shall not apply to a MedicarePlus organization that is a qualified association sponsor.

"(4) SPECIAL RULES FOR PROVIDER-SPONSORED ORGANIZATIONS.—

"(A) IN GENERAL.—A provider-sponsored organization that seeks to offer a MedicarePlus plan in a State may

apply for a waiver of the requirement of paragraph (1) for that organization operating in that State.

"(B) STANDARD.—The Secretary shall act on such an application within 60 days after the date it is filed and shall grant such a waiver for an organization with respect to a State if the Secretary determines that—

"(i) the State has failed to complete action on a licensing application of the organization within 90 days of the date of the State's receipt of the completed application; or

"(ii) the State denied such a licensing application and—

"(I) the State's licensing standards or review process imposes any requirements, procedures, or other standards to such organizations that are not generally applicable to any other entities engaged in substantially similar business,

"(II) such standards or review process applies solvency standards for the organization and the State is not approved under subsection (e)(2)(B), or

"(III) the State has used solvency standards to deny or discriminate against such an organization that has been provided a certificate of solvency under subsection (e)(2).

No period before the date of the enactment of this section shall be included in determining the 90-day period described in clause (i).

"(C) TREATMENT OF WAIVER.—In the case of a waiver granted under this paragraph for a provider-sponsored organization—

"(i) the waiver shall be effective for a 36-month period, except it may be renewed based on a subsequent application filed during the last 6 months of such period,

"(ii) the waiver is conditioned upon the pendency of the licensure application during the period the waiver is in effect, and

"(iii) any provisions of State law which relate to the licensing of the organization and which prohibit the organization from providing coverage pursuant to a contract under this part shall be superseded.

Nothing in this subparagraph shall be construed as limiting the number of times such a waiver may be renewed.

"(D) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the operation of section 514 of the Employee Retirement Income Security Act of 1974.

"(5) EXCEPTION IF REQUIRED TO OFFER MORE THAN MEDICAREPLUS PLANS.—Paragraph (1) shall not apply to a MedicarePlus organization in a State if the State requires the organization, as a condition of licensure, to offer any product or plan other than a MedicarePlus plan.

"(6) EXCEPTION IN CASES OF UNREASONABLE BARRIERS TO MARKET ENTRY.—

“(A) IN GENERAL.—A MedicarePlus organization that seeks to offer a MedicarePlus plan in a State may apply for a waiver of the requirement of paragraph (1) for that organization operating in that State.

“(B) STANDARD.—The Secretary shall act on such an application within 60 days after the date it is filed and shall grant such a waiver for an organization with respect to a State if the Secretary determines that—

“(i) the State (I) denied such a licensing application or (II) unreasonably delayed in acting upon the application, and

“(ii) the State’s licensing standards or review process imposes unreasonable barriers to market entry, including through the imposition of any requirements, procedures, or other standards to such organizations that are not generally applicable to any other entities engaged in substantially similar business.

“(C) APPLICATION OF CERTAIN RULES.—The provisions of subparagraphs (C) and (D) of paragraph (4) shall apply to this paragraph in the same manner as they apply under such paragraph, except that for this purpose any reference in paragraph (4)(C)(i) to 36-month period is deemed a reference to a 24-month period.

“(b) PREPAID PAYMENT.—A MedicarePlus organization shall be compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

“(c) ASSUMPTION OF FULL FINANCIAL RISK.—The MedicarePlus organization shall assume full financial risk on a prospective basis for the provision of the health care services (except, at the election of the organization, hospice care) for which benefits are required to be provided under section 1852(a)(1), except that the organization—

“(1) may obtain insurance or make other arrangements for the cost of providing to any enrolled member such services the aggregate value of which exceeds $5,000 in any year,

“(2) may obtain insurance or make other arrangements for the cost of such services provided to its enrolled members other than through the organization because medical necessity required their provision before they could be secured through the organization,

“(3) may obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

“(4) may make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

In the case of a MedicarePlus organization that is a union sponsor, Taft-Hartley sponsor, or a qualified association sponsor, this subsection shall not apply with respect to MedicarePlus plans offered by such organization and issued by an organization to which subsection (b)(1) applies or by a provider-sponsored organization (as defined in section 1854(a)).

"(d) PROVISION AGAINST RISK OF INSOLVENCY.—

"(1) IN GENERAL.—Each MedicarePlus organization shall meet standards under section 1856 relating to the financial solvency and capital adequacy of the organization and including provision to prevent enrollees from being held liable to any person or entity for the plan sponsor's debts in the event of the plan sponsor's insolvency. Such standards shall take into account the nature and type of MedicarePlus plans offered by the organization.

"(2) TREATMENT OF PROVIDER-SPONSORED ORGANIZATIONS.—

"(A) IN GENERAL.—In the case of an entity that is a provider-sponsored organization that is operating—

"(i) in a State approved under subparagraph (B), the organization shall meet the standards described in paragraph (1) through licensure by the State, or

"(ii) in a State that is not so approved, the organization shall meet the standards described in paragraph (1) through application and certification licensure by the Secretary.

"(B) APPROVED STATES.—

"(i) APPLICATION PROCESS.—For purposes of subparagraph (A), the Secretary shall establish a process under which a State may apply to the Secretary for a determination that the State is applying to provider-sponsored organizations, through its process for licensing provider-sponsored organizations, solvency standards that are identical with the solvency standards established under section 1856(c) for such organizations.

"(ii) DETERMINATION.—The Secretary shall approve such a State if the Secretary determines that the State is so applying such standards. If the Secretary denies such an approval, the State may reapply for such a determination.

"(iii) PUBLICATION.—The Secretary shall publish a list of States that are approved under this subparagraph.

"(3) TREATMENT OF UNION AND TAFT-HARTLEY SPONSORS.—An entity that is a union sponsor or a Taft-Hartley sponsor is deemed to meet the requirement of paragraph (1).

"(4) TREATMENT OF CERTAIN QUALIFIED ASSOCIATION SPONSORS.—An entity that is a qualified association sponsor is deemed to meet the requirement of paragraph (1) with respect to MedicarePlus plans offered by such association and issued by an organization to which subsection (b)(1) applies or by a provider-sponsored organization.

"(e) PROVIDER-SPONSORED ORGANIZATION DEFINED.—

“(1) IN GENERAL.—In this part, the term ‘provider-sponsored organization’ means a public or private entity—

“(A) that is established or organized by a health care provider, or group of affiliated health care providers,

“(B) that provides a substantial proportion (as defined by the Secretary) of the health care items and services under the contract under this part directly through the provider or affiliated group of providers, and

“(C) with respect to which those affiliated providers that share, directly or indirectly, substantial financial risk with respect to the provision of such items and services have at least a majority financial interest in the entity.

“(2) SUBSTANTIAL PROPORTION.—In defining what is a ‘substantial proportion’ for purposes of paragraph (1)(A), the Secretary—

“(A) shall take into account the need for such an organization to assume responsibility for a substantial proportion of services in order to assure financial stability and the practical difficulties in such an organization integrating a very wide range of service providers; and

“(B) may vary such proportion based upon relevant differences among organizations, such as their location in an urban or rural area.

“(3) AFFILIATION.—For purposes of this subsection, a provider is ‘affiliated’ with another provider if, through contract, ownership, or otherwise—

“(A) one provider, directly or indirectly, controls, is controlled by, or is under common control with the other,

“(B) both providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986, or

“(C) both providers are part of an affiliated service group under section 414 of such Code.

“(4) CONTROL.—For purposes of paragraph (3), control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance rights of another.

“(5) HEALTH CARE PROVIDER DEFINED.—In this subsection and subsection (f), the term ‘health care provider’ means—

“(A) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, and

“(B) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

“(6) REGULATIONS.—The Secretary shall issue regulations to carry out this subsection.

“(f) APPLICATION OF ANTITRUST RULE OF REASON TO PROVIDER-SPONSORED ORGANIZATIONS.—

“(1) RULE OF REASON STANDARD.—In any action under the antitrust laws, or under any law of a State (as defined in sec-

tion 4G(2) of the Clayton Act) similar to the antitrust laws, the following conduct shall not be deemed illegal per se:

"(A) The conduct of a provider-sponsored organization, and affiliated providers of the organization, in negotiating, making, or performing a contract (including the establishment and modification of a fee schedule and the development of a panel of physicians), to the extent such contract is for the purpose of providing health care services to individuals under the terms of a MedicarePlus plan offered by such an organization.

"(B) The exchange of information among health care providers relating to costs, sales, profitability, marketing, prices, or fees of any health care product or service if—

"(i) the exchange of such information was solely for the purpose of establishing a provider-sponsored organization and was reasonably required for such purpose, and

"(ii) such information was not used for any other purpose.

Such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition, including the effects on competition in properly defined markets.

"(C) The conduct of a group of health care providers, and provider members of such a group, in negotiating, making, or performing a contract (including the establishment and modification of a fee schedule and the development of a panel of physicians) with a provider-sponsored organization, to the extent such contract is for the purpose of providing health care services to individuals under the terms of a MedicarePlus plan of the organization, but only if the group meets the requirements of paragraph (2).

Such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition, including the effects on competition in properly defined markets.

"(2) REQUIREMENTS FOR GROUP.—A group of health care providers meets the requirements of this paragraph with respect to a MedicarePlus plan of a provider-sponsored organization if the group—

"(i) is not a provider-sponsored organization,

"(ii) is organized by, operated by, and composed only of members who are health care providers and for purposes that include providing health care services,

"(iii) is funded in part by capital contributions made by the members of such group,

"(iv) with respect to each contract made by such group for the purpose of providing a type of health care service to individuals under the terms of the plan—

"(I) requires all members of such group who engage in providing such type of health care service to agree to provide health care services of such type under such contract,

"(II) receives the compensation paid for the health care services of such type provided under such contract by such members, and

"(III) provides for the distribution of such compensation,

"(v) has established, consistent with the requirements of this part, a program to review, pursuant to written guidelines, the quality, efficiency, and appropriateness of treatment methods and setting of services for all health care providers and all patients participating in the plan, along with internal procedures to correct identified deficiencies relating to such methods and such services,

"(vi) has established, consistent with the requirements of this part, a program to monitor and control utilization of health care services provided under the plan, for the purpose of improving efficient, appropriate care and eliminating the provision of unnecessary health care services,

"(vii) has established a management program to coordinate the delivery of health care services for all health care providers and all patients participating in the plan, for the purpose of achieving efficiencies and enhancing the quality of health care services provided, and

"(viii) has established, consistent with the requirements of this part, a grievance and appeal process for such group designed to review and promptly resolve beneficiary or patient grievances and complaints.

"(3) DEFINITIONS.—For purposes of this subsection:

"(A) ANTITRUST LAWS.—The term 'antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

"(B) HEALTH CARE SERVICE.—The term 'health care service' means any service for which payment may be made under a MedicarePlus plan including services related to the delivery or administration of such service.

"(3) ISSUANCE OF GUIDELINES.—Not later than 120 days after the date of the enactment of this part, the Attorney General and the Federal Trade Commission shall issue jointly guidelines specifying the enforcement policies and analytical principles that will be applied by the Department of Justice and the Commission with respect to the operation of this subsection.

"(g) ORGANIZATIONS TREATED AS MEDICAREPLUS ORGANIZATIONS DURING TRANSITION.—Any of the following organizations shall be considered to qualify as a MedicarePlus organization for contract years beginning before January 1, 1998:

"(1) HEALTH MAINTENANCE ORGANIZATIONS.—An organization that is organized under the laws of any State and that is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act), an organization

recognized under State law as a health maintenance organization, or a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

"(2) LICENSED INSURERS.—An organization that is organized under the laws of any State and—

"(A) is licensed by a State agency as an insurer for the offering of health benefit coverage, or

"(B) is licensed by a State agency as a service benefit plan,

but only for individuals residing in an area in which the organization is licensed to offer health insurance coverage.

"(3) CURRENT RISK-CONTRACTORS.—An organization that is an eligible organization (as defined in section 1876(b)) and that has a risk-sharing contract in effect under section 1876 as of the date of the enactment of this section.

"PAYMENTS TO MEDICAREPLUS ORGANIZATIONS

"SEC. 1854. (a) PAYMENTS TO ORGANIZATIONS.—

"(1) MONTHLY PAYMENTS.—

"(A) IN GENERAL.—Under a contract under section 1857 and subject to subsections (e) and (f), the Secretary shall make monthly payments under this section in advance to each MedicarePlus organization, with respect to coverage of an individual under this part in a MedicarePlus payment area for a month, in an amount equal to 1/12 of the annual MedicarePlus capitation rate (as calculated under subsection (c)) with respect to that individual for that area, adjusted for such risk factors as age, disability status, gender, institutional 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 factors, if such changes will improve the determination of actuarial equivalence.

"(B) SPECIAL RULE FOR END-STAGE RENAL DISEASE.—The Secretary shall establish a separate rate of payment to a MedicarePlus organization with respect to any individual determined to have end-stage renal disease and enrolled in a MedicarePlus plan of the organization. Such rate of payment shall be actuarially equivalent to rates paid to other enrollees in the MedicarePlus payment area (or such other area as specified by the Secretary).

"(2) ADJUSTMENT TO REFLECT NUMBER OF ENROLLEES.—

"(A) IN GENERAL.—The amount of payment under this subsection may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled with an organization under this part and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

"(B) SPECIAL RULE FOR CERTAIN ENROLLEES.—

"(i) IN GENERAL.—Subject to clause (ii), the Secretary may make retroactive adjustments under subparagraph (A) to take into account individuals enrolled

during the period beginning on the date on which the individual enrolls with a MedicarePlus organization under a plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the organization under this part, except that for purposes of making such retroactive adjustments under this subparagraph, such period may not exceed 90 days.

"(ii) EXCEPTION.—No adjustment may be made under clause (i) with respect to any individual who does not certify that the organization provided the individual with the disclosure statement described in section 1852(c) at the time the individual enrolled with the organization.

"(b) ANNUAL ANNOUNCEMENT OF PAYMENT RATES.—

"(1) ANNUAL ANNOUNCEMENT.—The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than August 1 before the calendar year concerned—

"(A) the annual MedicarePlus capitation rate for each MedicarePlus payment area for the year, and

"(B) the risk and other factors to be used in adjusting such rates under subsection (a)(1)(A) for payments for months in that year.

"(2) ADVANCE NOTICE OF METHODOLOGICAL CHANGES.—At least 45 days before making the announcement under paragraph (2) for a year, the Secretary shall provide for notice to MedicarePlus organizations of proposed changes to be made in the methodology from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

"(3) EXPLANATION OF ASSUMPTIONS.—In each announcement made under paragraph (1) for a year, the Secretary shall include an explanation of the assumptions and changes in methodology used in the announcement in sufficient detail so that MedicarePlus organizations can compute monthly adjusted MedicarePlus capitation rates for individuals in each MedicarePlus payment area which is in whole or in part within the service area of such an organization.

"(c) CALCULATION OF ANNUAL MEDICAREPLUS CAPITATION RATES.—

"(1) IN GENERAL.—For purposes of this part, the annual MedicarePlus capitation rate, for a MedicarePlus payment area for a contract year consisting of a calendar year, is equal to the greatest of the following:

"(A) BLENDED CAPITATION RATE.—The sum of—

"(i) area-specific percentage for the year (as specified under paragraph (2) for the year) of the annual area-specific MedicarePlus capitation rate for the year for the MedicarePlus payment area, as determined under paragraph (3), and

"(ii) national percentage (as specified under paragraph (2) for the year) of the input-price-adjusted annual national MedicarePlus capitation rate for the year, as determined under paragraph (4),

multiplied by a budget neutrality adjustment factor determined under paragraph (5).

"(B) MINIMUM AMOUNT.—

"(i) For 1996, $300.

"(ii) For 1997, $350.

"(iii) For a succeeding year, is the minimum amount specified in this subparagraph for the preceding year increased by national average per capita growth percentage, specified under paragraph (6) for that succeeding year.

"(C) MINIMUM INCREASE OF 2 PERCENT OVER PREVIOUS YEAR'S RATE.—

"(i) For 1996, 102 percent of the annual per capita rate of payment for 1995 determined under section 1876(a)(1)(C) for the MedicarePlus payment area.

"(ii) For a subsequent year, 102 percent of the annual MedicarePlus capitation rate under this subsection for the area for the previous year.

"(2) AREA-SPECIFIC AND NATIONAL PERCENTAGES.—For purposes of paragraph (1)(A)—

"(A) for 1996 and 1997, the 'area-specific percentage' is 90 percent and the 'national percentage' is 10 percent,

"(B) for 1998, the 'area-specific percentage' is 85 percent and the 'national percentage' is 15 percent,

"(C) for 1999, the 'area-specific percentage' is 80 percent and the 'national percentage' is 20 percent,

"(D) for 2000, the 'area-specific percentage' is 75 percent and the 'national percentage' is 25 percent, and

"(E) for a year after 2000, the 'area-specific percentage' is 70 percent and the 'national percentage' is 30 percent.

"(3) ANNUAL AREA-SPECIFIC MEDICAREPLUS CAPITATION RATE.—For purposes of paragraph (1)(A), the annual area-specific MedicarePlus capitation rate for a MedicarePlus payment area—

"(A) for 1996 is the annual per capita rate of payment for 1995 determined under section 1876(a)(1)(C) for the MedicarePlus payment area, increased by the national average per capita growth percentage for 1996 (as defined in paragraph (6)); or

"(B) for a subsequent year is the annual area-specific MedicarePlus capitation rate for the previous year determined under this paragraph for the MedicarePlus payment area, increased by the national average per capita growth percentage for such subsequent year.

"(4) INPUT-PRICE-ADJUSTED ANNUAL NATIONAL MEDICAREPLUS CAPITATION RATE.—

"(A) IN GENERAL.—For purposes of paragraph (1)(A), the input-price-adjusted annual national MedicarePlus capitation rate for a MedicarePlus payment area for a year is equal to the sum, for all the types of medicare services

(as classified by the Secretary), of the plan (for each such type) of—

"(i) the national standardized annual MedicarePlus capitation rate (determined under subparagraph (B)) for the year,

"(ii) the proportion of such rate for the year which is attributable to such type of services, and

"(iii) an index that reflects (for that year and that type of services) the relative input price of such services in the area compared to the national average input price of such services.

In applying clause (iii), the Secretary shall, subject to subparagraph (C), apply those indices under this title that are used in applying (or updating) national payment rates for specific areas and localities.

"(B) NATIONAL STANDARDIZED ANNUAL MEDICAREPLUS CAPITATION RATE.—In subparagraph (A)(i), the 'national standardized annual MedicarePlus capitation rate' for a year is equal to—

"(i) the sum (for all MedicarePlus payment areas) of the product of (I) the annual area-specific MedicarePlus capitation rate for that year for the area under paragraph (3), and (II) the average number of medicare beneficiaries residing in that area in the year; divided by

"(ii) the total average number of medicare beneficiaries residing in all the MedicarePlus payment areas for that year.

"(C) SPECIAL RULES FOR 1996.—In applying this paragraph for 1996—

"(i) medicare services shall be divided into 2 types of services: part A services and part B services;

"(ii) the proportions described in subparagraph (A)(ii) for such types of services shall be—

"(I) for part A services, the ratio (expressed as a percentage) of the average annual per capita rate of payment for the area for part A for 1995 to the total average annual per capita rate of payment for the area for parts A and B for 1995, and

"(II) for part B services, 100 percent minus the ratio described in subclause (I);

"(iii) for the part A services, 70 percent of payments attributable to such services shall be adjusted by the index used under section 1886(d)(3)(E) to adjust payment rates for relative hospital wage levels for hospitals located in the payment area involved;

"(iv) for part B services—

"(I) 66 percent of payments attributable to such services shall be adjusted by the index of the geographic area factors under section 1848(e) used to adjust payment rates for physicians' services furnished in the payment area, and

"(II) of the remaining 34 percent of the amount of such payments, 70 percent shall be adjusted by the index described in clause (iii);

"(v) the index values shall be computed based only on the beneficiary population who are 65 years of age or older who are not determined to have end stage renal disease.

The Secretary may continue to apply the rules described in this subparagraph (or similar rules) for 1997.

"(5) BUDGET NEUTRALITY ADJUSTMENT FACTOR.—For each year, the Secretary shall compute a budget neutrality adjustment factor so that the aggregate of the payments under this part shall not exceed the aggregate payments that would have been made under this part if the area-specific percentage for the year had been 100 percent and the national percentage had been 0 percent.

"(6) NATIONAL AVERAGE PER CAPITA GROWTH PERCENTAGE DEFINED.—In this part, the 'national average per capita growth percentage' for—

"(A) 1996 is 8.0 percent,

"(B) 1997 is 3.8 percent,

"(C) 1998 is 4.6 percent,

"(D) 1999 is 4.3 percent,

"(E) 2000 is 3.8 percent,

"(F) 2001 is 5.5 percent,

"(G) 2002 is 5.6 percent, and

"(H) each subsequent year is 5.0 percent.

"(d) MEDICAREPLUS PAYMENT AREA DEFINED.—

"(1) IN GENERAL.—In this part, except as provided in paragraph (3), the term 'MedicarePlus payment area' means a county, or equivalent area specified by the Secretary.

"(2) RULE FOR ESRD BENEFICIARIES.—In the case of individuals who are determined to have end stage renal disease, the MedicarePlus payment area shall be each State.

"(3) GEOGRAPHIC ADJUSTMENT.—

"(A) IN GENERAL.—Upon request of a State for a contract year (beginning after 1996) made at least 7 months before the beginning of the year, the Secretary shall make a geographic adjustment to a MedicarePlus payment areas in the State otherwise determined under paragraph (1)—

"(i) to a single statewide MedicarePlus payment area,

"(ii) to the metropolitan based system described in subparagraph (C), or

"(iii) to consolidating into a single MedicarePlus payment area noncontinuous counties (or equivalent areas described in paragraph (1)) within a State.

Such adjustment shall be effective for payments for months beginning with January of the year following the year in which the request is received.

"(B) BUDGET NEUTRALITY ADJUSTMENT.—In the case of a State requesting an adjustment under this paragraph, the Secretary shall adjust the payment rates otherwise established under this paragraph for MedicarePlus payment

areas in the State in a manner so that the aggregate of the payments under this section in the State shall not exceed the aggregate payments that would have been made under this section for MedicarePlus payment areas in the State in the absence of the adjustment under this paragraph.

"(C) METROPOLITAN BASED SYSTEM.—The metropolitan based system described in this subparagraph is one in which—

"(i) all the portions of each metropolitan statistical area in the State or in the case of a consolidated metropolitan statistical area, all of the portions of each primary metropolitan statistical area within the consolidated area within the State, are treated as a single MedicarePlus payment area, and

"(ii) all areas in the State that do not fall within a metropolitan statistical area are treated as a single MedicarePlus payment area.

"(D) AREAS.—In subparagraph (C), the terms 'metropolitan statistical area', 'consolidated metropolitan statistical area', and 'primary metropolitan statistical area' mean any area designated as such by the Secretary of Commerce.

"(e) SPECIAL RULES FOR INDIVIDUALS ELECTING HIGH DEDUCTIBLE PLANS.—

"(1) IN GENERAL.—In the case of an individual who has elected a high deductible plan, notwithstanding the preceding provisions of this section—

"(A) the amount of the monthly payment to the MedicarePlus organization offering the high deductible plan shall not exceed the monthly premium for the plan, and

"(B) subject to paragraph (2), the difference between the amount of payment that would otherwise be made and the amount of payment to such organization shall be made directly into a High Deductible MedicarePlus MSA established (and, if applicable, designated) by the individual under paragraph (2).

"(2) ESTABLISHMENT AND DESIGNATION OF MEDICAREPLUS MEDICAL SAVINGS ACCOUNT AS REQUIREMENT FOR PAYMENT OF CONTRIBUTION.—In the case of an individual who has elected coverage under a high deductible plan, no payment shall be made under paragraph (1)(B) on behalf of an individual for a month unless the individual—

"(A) has established before the beginning of the month (or by such other deadline as the Secretary may specify) a High Deductible MedicarePlus MSA (as defined in section 137(b)(2) of the Internal Revenue Code of 1986), and

"(B) if the individual has established more than one High Deductible MedicarePlus MSA, has designated one of such accounts as the individual's High Deductible MedicarePlus MSA for purposes of this part.

Under rules under this section, such an individual may change the designation of such account under subparagraph (B) for purposes of this part.

"(3) LUMP SUM DEPOSIT OF MEDICAL SAVINGS ACCOUNT CONTRIBUTION.—In the case of an individual electing a high deductible plan effective beginning with a month in a year, the amount of the contribution to the High Deductible MedicarePlus MSA on behalf of the individual for that month and all successive months in the year shall be deposited during that first month. In the case of a termination of such an election as of a month before the end of a year, the Secretary shall provide for a procedure for the recovery of deposits attributable to the remaining months in the year.

"(4) PERMITTING CONTRIBUTIONS INTO MEDICAREPLUS MSA.—Effective January 1, 1997, if a member of a Federally-qualified health maintenance organization certifies that a Rebate MedicarePlus MSA (as defined in section 137(c) of the Internal Revenue Code of 1986) has been established for the benefit of such member, the health maintenance organization may reduce the basic health services payment otherwise determined under otherwise applicable law by requiring the payment of a deductible by the member for basic health services.

"(f) PAYMENTS OF REBATES.—

"(1) IN GENERAL.—If the amount of the monthly premium for a MedicarePlus plan (other than a high deductible plan) for an MedicarePlus payment area for a year is less than 1⁄12 of the annual MedicarePlus capitation rate applied under this section 1854 for the area and year involved, at the election of an individual enrolled under the plan the Secretary shall either—

"(A) in the case of an individual who has a Rebate MedicarePlus MSA account (as defined in section 137(b)(3) of the Internal Revenue Code of 1986), to deposit 100 percent of such difference in such an account specified by the individual; or

"(B)(i) pay to the MedicarePlus organization on behalf of such individual the monthly amount equal to 100 percent of such difference up to the amount of the premium amount of such individual for supplemental benefits described in section 1895H(b),

"(ii) pay to such individual an amount equal to 75 percent of the remainder of such difference, and

"(iii) deposit any remainder of such difference in the Federal Hospital Insurance Trust Fund.

"(2) TIME FOR PAYMENT.—

"(A) IN GENERAL.—Subject to subparagraph (B), payments and deposits described in paragraph (1) shall be made on a monthly basis.

"(B) CASH REBATES.—A rebate under paragraph (1)(B)(ii) shall be paid as of the close of the calendar year to which the enrollment applied.

"(g) PAYMENTS FROM TRUST FUND.—The payment to a MedicarePlus organization under this section for individuals enrolled under this part with the organization, and payments to a High Deductible or Rebate MedicarePlus MSA under subsection (e)(1)(B) or subsection (f), shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines

reflects the relative weight that benefits under part A and under part B represents of the actuarial value of the total benefits under this title.

"(h) SPECIAL RULE FOR CERTAIN INPATIENT HOSPITAL STAYS.—In the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1886(d)(1)(B)) as of the effective date of the individual's—

"(1) election under this part of a MedicarePlus plan offered by a MedicarePlus organization—

"(A) payment for such services until the date of the individual's discharge shall be made under this title through the MedicarePlus plan or the Medicare fee-for-service program option described in section 1851(a)(1)(A) (as the case may be) elected before the election with such organization,

"(B) the elected organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

"(C) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this part; or

"(2) termination of election with respect to a MedicarePlus organization under this part—

"(A) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

"(B) payment for such services during the stay shall not be made under section 1886(d) or by any succeeding MedicarePlus organization, and

"(C) the terminated organization shall not receive any payment with respect to the individual under this part during the period the individual is not enrolled.

"PREMIUMS AND REBATES

"SEC. 1855. (a) SUBMISSION AND CHARGING OF PREMIUMS.—

"(1) IN GENERAL.—Subject to paragraph (3), each MedicarePlus organization shall file with the Secretary each year, in a form and manner and at a time specified by the Secretary—

"(A) the amount of the monthly premium for coverage for services under section 1852(a) under each MedicarePlus plan it offers under this part in each MedicarePlus payment area (as defined in section 1854(d)) in which the plan is being offered; and

"(B) the enrollment capacity in relation to the plan in each such area.

"(2) TERMINOLOGY.—In this part—

"(A) the term 'monthly premium' means, with respect to a MedicarePlus plan offered by a MedicarePlus organization, the monthly premium filed under paragraph (1), not taking into account the amount of any payment made toward the premium under section 1854; and

"(B) the term 'net monthly premium' means, with respect to such a plan and an individual enrolled with the plan, the premium (as defined in subparagraph (A)) for the

plan reduced by the amount of payment made toward such premium under section 1854.

"(3) LIMITATION ON PORTION OF MONTHLY PREMIUM ATTRIBUTABLE TO REQUIRED COVERAGE.—In no case may the portion of the monthly premium for a MedicarePlus plan for an area and year attributable to required services under section 1852(a)(1) exceed the adjusted community rate for the plan (as defined in subsection (f)(5)).

"(b) NET MONTHLY PREMIUM.—The amount of the net monthly premium charged by a MedicarePlus organization for a MedicarePlus plan offered in a MedicarePlus payment area to an individual under this part shall be equal to the amount (if any) by which—

"(1) the amount of the monthly premium for the plan for the period involved, exceeds

"(2) 1⁄12 of the annual MedicarePlus capitation rate applied under section 1854 for the area and year involved.

"(c) UNIFORM PREMIUM.—The monthly premium and net monthly premium (including rebates offered) by a MedicarePlus organization under this part may not vary among individuals who reside in the same MedicarePlus payment area.

"(d) TERMS AND CONDITIONS OF IMPOSING PREMIUMS.—Each MedicarePlus organization shall permit the payment of net monthly premiums on a monthly basis and may terminate election of individuals for a MedicarePlus plan for failure to make premium payments only in accordance with section 1851(g)(3)(B)(i).

"(e) RELATION OF PREMIUMS AND COST-SHARING TO BENEFITS.—In no case may the portion of a MedicarePlus organization's monthly premium and the actuarial value of its deductibles, coinsurance, and copayments charged for (to the extent attributable to the required benefits described in section 1852(a)(1) and not counting any amount attributable to balance billing) to individuals who are enrolled under this part with the organization exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this part 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 part with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B if they were not members of a MedicarePlus organization.

"(f) REQUIREMENT FOR ADDITIONAL BENEFITS, REBATES, OR BOTH.—

"(1) REQUIREMENT.—

"(A) IN GENERAL.—Each MedicarePlus organization (in relation to a MedicarePlus plan it offers) shall provide that if there is an excess amount (as defined in subparagraph (B)) for the plan for a contract year, subject to the succeeding provisions of this subsection, the organization shall provide to individuals such additional benefits (as the organization may specify), a monetary rebate (paid on a monthly basis), or a combination thereof, in a total value which is

at least equal to the adjusted excess amount (as defined in subparagraph (C)).

"(B) EXCESS AMOUNT.—For purposes of this paragraph, the 'excess amount', for an organization for a plan, is the amount (if any) by which—

"(i) the average of the capitation payments made to the organization under section 1854 for the plan at the beginning of contract year, exceeds

"(ii) the actuarial value of the required benefits described in section 1852(a)(1) under the plan for individuals under this part, as determined based upon an adjusted community rate described in paragraph (5) (as reduced for the actuarial value of the coinsurance and deductibles under parts A and B).

"(C) ADJUSTED EXCESS AMOUNT.—For purposes of this paragraph, the 'adjusted excess amount', for an organization for a plan, is the excess amount reduced to reflect any amount withheld and reserved for the organization for the year under paragraph (3).

"(D) NO APPLICATION TO HIGH DEDUCTIBLE PLANS.—Subparagraph (A) shall not apply to a high deductible plan.

"(E) UNIFORM APPLICATION.—This paragraph shall be applied uniformly for all enrollees for a plan in a MedicarePlus payment area.

"(F) CONSTRUCTION.—Nothing in this subsection shall be construed as preventing a MedicarePlus organization from providing health care benefits that are in addition to the benefits otherwise required to be provided under this paragraph and from imposing a premium for such additional benefits.

"(2) RULES IN RELATION TO REBATES.—To the extent that the adjusted excess amount for a plan exceeds the value of additional benefits provided under subparagraph (A) by the MedicarePlus organization in relation to the plan for a month, then the organization shall provide for payment of the amount of such excess as follows:

"(A) REBATE MEDICAREPLUS MSA.—If the individual has a Rebate MedicarePlus MSA and elects treatment under this subparagraph, the organization shall provide for payment of such excess into such MSA.

"(B) ADDITIONAL AMOUNT.—The organization shall provide for payment of the amount of any additional excess as follows:

"(i) 75 percent of such excess to the individual.

"(ii) 25 percent to the Federal Hospital Insurance Trust Fund.

"(3) STABILIZATION FUND.—A MedicarePlus organization may provide that a part of the value of an excess actuarial amount described in paragraph (1) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent re-

quired to stabilize and prevent undue fluctuations in the additional benefits and rebates offered in those subsequent periods by the organization in accordance with such paragraph. Any of such value of the amount reserved which is not provided as additional benefits described in paragraph (1)(A) to individuals electing the MedicarePlus plan of the organization in accordance with such paragraph prior to the end of such periods, shall revert for the use of such trust funds.

"(4) DETERMINATION BASED ON INSUFFICIENT DATA.—For purposes of this subsection, if the Secretary finds that there is insufficient enrollment experience (including no enrollment experience in the case of a provider-sponsored organization) to determine an average of the capitation payments to be made under this part at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this part.

"(5) ADJUSTED COMMUNITY RATE.—

"(A) IN GENERAL.—For purposes of this subsection, subject to subparagraph (B), the term 'adjusted community rate' for a service or services means, at the election of a MedicarePlus organization, either—

"(i) the rate of payment for that service or services which the Secretary annually determines would apply to an individual electing a MedicarePlus plan under this part if the rate of payment were determined under a 'community rating system' (as defined in section 1302(8) of the Public Health Service Act, other than subparagraph (C)), or

"(ii) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to such an individual, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the individuals electing coverage under this part and the utilization characteristics of the other enrollees with the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of individuals selecting other MedicarePlus coverage, or MedicarePlus eligible individuals in the area, in the State, or in the United States, eligible to elect MedicarePlus coverage under this part and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

"(B) SPECIAL RULE FOR PROVIDER-SPONSORED ORGANIZATIONS.—In the case of a MedicarePlus organization that is a provider-sponsored organization, the adjusted community rate under subparagraph (A) for a MedicarePlus plan of the organization may be computed (in a manner specified by the Secretary) using data in the general commercial marketplace or (during a transition period) based on the costs incurred by the organization in providing such a plan.

"(g) TRANSITIONAL FILE AND USE FOR CERTAIN REQUIREMENTS.—

"(1) IN GENERAL.—In the case of a MedicarePlus plan proposed to be offered before the end of the transition period (as defined in section 1851(e)(1)(B)) by a MedicarePlus organization described in section 1853(f)(3) or by a MedicarePlus organization with a contract in effect under section 1857, if the organization submits complete information to the Secretary regarding the plan demonstrating that the plan meets the requirements and standards under section 1852(a) and subsections (a) through (f) of this section (relating to benefits and premiums), the plan shall be deemed as meeting such requirements and standards under such provisions unless the Secretary disapproves the plan within 60 days after the date of submission of the complete information.

"(2) CONSTRUCTION.—Nothing in paragraph (1) shall be construed as waiving the requirement of a contract under section 1857 or waiving requirements and standards not referred to in paragraph (1).

"ESTABLISHMENT OF STANDARDS; CERTIFICATION OF ORGANIZATIONS AND PLANS

"SEC. 1856. (a) ESTABLISHMENT OF STANDARDS.—

"(1) STANDARDS APPLICABLE TO STATE-REGULATED ORGANIZATIONS AND PLANS AND NON-SOLVENCY STANDARDS FOR PROVIDER-SPONSORED ORGANIZATIONS.—

"(A) RECOMMENDATIONS OF NAIC.—The Secretary shall request the National Association of Insurance Commissioners to develop and submit to the Secretary, not later than 12 months after the date of the enactment of the Medicare Preservation Act of 1995, proposed standards consistent with the requirements of this part for MedicarePlus organizations (other than union sponsors and Taft-Hartley sponsors, and other than solvency standards described in subsection (b) for provider-sponsored organizations) and MedicarePlus plans offered by such organizations, except that such proposed standards may relate to MedicarePlus organizations that are qualified association sponsors only with respect to MedicarePlus plans offered by them and only if such plans are issued by organizations to which section 1853(a)(1) applies.

"(B) REVIEW.—If the Association submits such standards on a timely basis, the Secretary shall review such standards to determine if the standards meet the requirements of this part. The Secretary shall complete the review of the standards not later than 90 days after the date of their submission. The Secretary shall promulgate such proposed standards to apply to organizations and plans described in subparagraph (A) except to the extent that the Secretary modifies such proposed standards because they do not meet such requirements.

"(C) FAILURE TO SUBMIT.—If the Association does not submit such standards on a timely basis, the Secretary shall promulgate such standards by not later than the date

the Secretary would otherwise have been required to promulgate standards under subparagraph (B).

"(D) USE OF INTERIM RULES.—For the period in which this part is in effect and standards are being developed and established under the preceding provisions of this subsection, the Secretary shall provide by not later than June 1, 1996, for the application of such interim standards (without regard to any requirements for notice and public comment) as may be appropriate to provide for the expedited implementation of this part. Such interim standards shall not apply after the date standards are established under the preceding provisions of this paragraph.

"(2) ESTABLISHMENT OF STANDARDS FOR UNION AND TAFT-HARTLEY SPONSORS, QUALIFIED ASSOCIATION SPONSORS, AND PLANS.—

"(A) IN GENERAL.—The Secretary shall develop and promulgate by regulation standards consistent with the requirements of this part for union and Taft-Hartley sponsors, for qualified association sponsors, and for MedicarePlus plans offered by such organizations (other than MedicarePlus plans offered by qualified association sponsors that are issued by organizations to which section 1853(a)(1) applies).

"(B) CONSULTATION WITH SECRETARY OF LABOR.—The Secretary shall consult with the Secretary of Labor with respect to such standards for such sponsors and plans.

"(C) TIMING.—Standards under this paragraph shall be promulgated at or about the time standards are promulgated under paragraph (1).

"(3) COORDINATION AMONG FINAL STANDARDS.—In establishing standards (other than on an interim basis) under this subsection and subsection (b), the Secretary shall seek to provide for consistency (as appropriate) across the different types of MedicarePlus organizations, in order to promote equitable treatment of different types of organizations and consistent protection for individuals who elect plans offered by the different types of MedicarePlus organizations.

"(4) USE OF CURRENT STANDARDS FOR INTERIM STANDARDS.—To the extent practicable and consistent with the requirements of this part, standards established on an interim basis to carry out requirements of this part may be based on currently applicable standards, such as the rules established under section 1876 (as in effect as of the date of the enactment of this section) to carry out analogous provisions of such section or standards established or developed for application in the private health insurance market.

"(5) APPLICATION OF NEW STANDARDS TO ENTITIES WITH A CONTRACT.—In the case of a MedicarePlus organization with a contract in effect under this part at the time standards applicable to the organization under this section are changed, the organization may elect not to have such changes apply to the organization until the end of the current contract year (or, if there is less than 6 months remaining in the contract year, until 1 year after the end of the current contract year).

"(6) RELATION TO STATE LAWS.—The standards established under this subsection shall supersede any State law or regulation with respect to MedicarePlus plans which are offered by MedicarePlus organizations under this part and are issued by organizations to which section 1853(a)(1) applies, to the extent such law or regulation is inconsistent with such standards.

"(b) ESTABLISHMENT OF SOLVENCY STANDARDS FOR PROVIDER-SPONSORED ORGANIZATIONS.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter 3 of chapter 5 of title 5, United States Code, standards described in section 1853(e) (relating to the financial solvency and capital adequacy of the organization) that entities must meet to qualify as provider-sponsored organizations under this part.

"(B) FACTORS TO CONSIDER.—In establishing solvency standards under subparagraph (A) for provider-sponsored organizations, the Secretary shall consult with interested parties and shall take into account—

"(i) the delivery system assets of such an organization and ability of such an organization to provide services directly to enrollees through affiliated providers, and

"(ii) alternative means of protecting against insolvency, including reinsurance, unrestricted surplus, letters of credit, guarantees, organizational insurance coverage, partnerships with other licensed entities, and valuation attributable to the ability of such an organization to meet its service obligations through direct delivery of care.

"(2) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subsection, the Secretary, after consultation with the National Association of Insurance Commissioners, the American Academy of Actuaries, organizations representative of medicare beneficiaries, and other interested parties, shall publish the notice provided for under section 564(a) of title 5, United States Code, by not later than 45 days after the date of the enactment of Medicare Preservation Act of 1995.

"(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under paragraph (2), and for purposes of this subsection, the 'target date for publication' (referred to in section 564(a)(5) of such title) shall be September 1, 1996.

"(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—In applying section 564(c) of such title under this subsection, '15 days' shall be substituted for '30 days'.

"(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

"(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 30 days after the end of the comment period provided for under section 564(c) of such title (as shortened under paragraph (4)), and

"(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

"(6) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than June 1, 1996, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before one month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress towards such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

"(7) FINAL COMMITTEE REPORT.—If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than one month before the target publication date.

"(8) INTERIM, FINAL EFFECT.—The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target publication date. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

"(9) PUBLICATION OF RULE AFTER PUBLIC COMMENT.—The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target publication date.

"(10) PROCESS FOR APPROVAL OF APPLICATIONS FOR CERTIFICATION OF SOLVENCY.—

"(A) IN GENERAL.—The Secretary shall establish a process for the receipt and approval of applications of entities for certification of solvency of provider-sponsored organizations under this part. Under such process, the Secretary shall act upon a complete application submitted within 60 days after the date it is received.

"(B) CIRCULATION OF PROPOSED APPLICATION FORM.—By March 1, 1996, the Secretary, after consultation with the negotiated rulemaking committee, shall circulate a proposed application form that could be used by entities considering being certified for solvency under this part.

"(c) CERTIFICATION PROCESS.—

"(1) STATE CERTIFICATION PROCESS FOR STATE-REGULATED ORGANIZATIONS AND NON-SOLVENCY STANDARDS FOR PROVIDER-SPONSORED ORGANIZATIONS.—

"(A) APPROVAL OF STATE PROCESS.—The Secretary shall approve a MedicarePlus certification and enforcement program established by a State for applying the standards established under this section to MedicarePlus organiza-

tions (other than union sponsors and Taft-Hartley sponsors and other than solvency standards for provider-sponsored organizations) and MedicarePlus plans offered by such organizations if the Secretary determines that the program effectively provides for the application and enforcement of such standards in the State with respect to such organizations and plans and does not discriminate in its application by type of organization or plan. Such program shall provide for certification of compliance of MedicarePlus organizations and plans with the applicable requirements of this part not less often than once every 3 years.

"(B) EFFECT OF CERTIFICATION UNDER STATE PROCESS.—A MedicarePlus organization and MedicarePlus plan offered by such an organization that is certified under such program is considered to have been certified under this paragraph with respect to the offering of the plan to individuals residing in the State.

"(C) USER FEES.—The State may impose user fees on organizations seeking certification under this paragraph in such amounts as the State deems sufficient to finance the costs of such certification. Nothing in this subparagraph shall be construed as restricting a State's authority to impose premium taxes, other taxes, or other levies.

"(D) REVIEW.—The Secretary periodically shall review State programs approved under subparagraph (A) to determine if they continue to provide for certification and enforcement described in such paragraph. If the Secretary finds that a State program no longer so provides, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State program to meet the requirements of paragraph (1). If the Secretary makes a final determination that the State program, after such an opportunity, fails to meet such requirements, the provisions of subsection (b) shall apply to MedicarePlus organizations and plans in the State.

"(E) EFFECT OF NO STATE PROGRAM.—Beginning on the date standards are established under section 1856, in the case of organizations and plans in States in which a certification program has not been approved and in operation under subparagraph (A), the Secretary shall establish a process for the certification of MedicarePlus organizations (other than union sponsors and Taft-Hartley sponsors and other than solvency standards for provider-sponsored organizations) and plans of such organizations as meeting such standards.

"(F) PUBLICATION OF LIST OF APPROVED STATE PROGRAMS.—The Secretary shall publish (and periodically update) a list of those State programs which are approved for purposes of this paragraph.

"(2) FEDERAL CERTIFICATION PROCESS FOR UNION SPONSORS AND TAFT-HARTLEY SPONSORS.—

"(A) ESTABLISHMENT.—The Secretary shall establish a process for the certification of union sponsors and Taft-

Hartley sponsors and MedicarePlus plans offered by such sponsors and organizations as meeting the applicable standards established under this section.

"(B) INVOLVEMENT OF SECRETARY OF LABOR.—Such process shall be established and operated in cooperation with the Secretary of Labor with respect to union sponsors and Taft-Hartley sponsors.

"(C) USE OF STATE LICENSING AND PRIVATE ACCREDITATION PROCESSES.—

"(i) IN GENERAL.—The process under this paragraph shall, to the maximum extent practicable, provide that MedicarePlus organizations and plans that are licensed or certified through a qualified private accreditation process that the Secretary finds applies standards that are no less stringent than the requirements of this part are deemed to meet the corresponding requirements of this part for such an organization or plan.

"(ii) PERIODIC ACCREDITATION.—The use of an accreditation under clause (i) shall be valid only for such period as the Secretary specifies.

"(D) USER FEES.—The Secretary may impose user fees on entities seeking certification under this paragraph in such amounts as the Secretary deems sufficient to finance the costs of such certification.

"(3) NOTICE TO ENROLLEES IN CASE OF DECERTIFICATION.—If a MedicarePlus organization or plan is decertified under this subsection, the organization shall notify each enrollee with the organization and plan under this part of such decertification.

"(4) QUALIFIED ASSOCIATION SPONSORS.—In the case of MedicarePlus plans offered by a MedicarePlus organization that is a qualified association sponsor and issued by an organization to which section 1853(a)(1) applies or by a provider-sponsored organization, nothing in this subsection shall be construed as limiting the authority of States to regulate such plans.

"CONTRACTS WITH MEDICAREPLUS ORGANIZATIONS

"SEC. 1857. (a) IN GENERAL.—The Secretary shall not permit the election under section 1851 of a MedicarePlus plan offered by a MedicarePlus organization under this part, and no payment shall be made under section 1854 to an organization, unless the Secretary has entered into a contract under this section with an organization with respect to the offering of such plan. Such a contract with an organization may cover more than one MedicarePlus plan. Such contract shall provide that the organization agrees to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

"(b) MINIMUM ENROLLMENT REQUIREMENTS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Secretary may not enter into a contract under this section with a MedicarePlus organization (other than a union sponsor or Taft-Hartley sponsor) unless the organization has at least 5,000 individuals (or 1,500 individuals in the case of an organization

that is a provider-sponsored organization) who are receiving health benefits through the organization, except that the standards under section 1856 may permit the organization to have a lesser number of beneficiaries (but not less than 500 in the case of an organization that is a provider-sponsored organization) if the organization primarily serves individuals residing outside of urbanized areas.

"(2) EXCEPTION FOR HIGH DEDUCTIBLE PLAN.—Paragraph (1) shall not apply with respect to a contract that relates only to a high deductible plan.

"(3) ALLOWING TRANSITION.—The Secretary may waive the requirement of paragraph (1) during the first 3 contract years with respect to an organization.

"(c) CONTRACT PERIOD AND EFFECTIVENESS.—

"(1) PERIOD.—Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term.

"(2) TERMINATION AUTHORITY.—In accordance with procedures established under subsection (h), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in an applicable paragraph of subsection (g) on the MedicarePlus organization if the Secretary determines that the organization—

"(A) has failed substantially to carry out the contract;

"(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part; and

"(C) no longer substantially meets the applicable conditions of this part.

"(3) EFFECTIVE DATE OF CONTRACTS.—The effective date of any contract executed pursuant to this section shall be specified in the contract, except that in no case shall a contract under this section which provides for coverage under a high deductible account be effective before January 1997 with respect to such coverage.

"(4) PREVIOUS TERMINATIONS.—The Secretary may not enter into a contract with a MedicarePlus organization if a previous contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

"(5) NO CONTRACTING AUTHORITY.—The authority vested in the Secretary by this part may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this title.

"(d) PROTECTIONS AGAINST FRAUD AND BENEFICIARY PROTECTIONS.—

"(1) INSPECTION AND AUDIT.—Each contract under this section shall provide that the Secretary, or any person or organization designated by the Secretary—

"(A) shall have the right to inspect or otherwise evaluate (i) the quality, appropriateness, and timeliness of services performed under the contract and (ii) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

"(B) shall have the right to audit and inspect any books and records of the MedicarePlus organization that pertain (i) to the ability of the organization to bear the risk of potential financial losses, or (ii) to services performed or determinations of amounts payable under the contract.

"(2) ENROLLEE NOTICE AT TIME OF TERMINATION.—Each contract under this section shall require the organization to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this title, to each individual enrolled with the organization under this part.

"(3) DISCLOSURE.—

"(A) IN GENERAL.—Each MedicarePlus organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

"(i) Such information as the Secretary may require demonstrating that the organization has a fiscally sound operation.

"(ii) A copy of the report, if any, filed with the Health Care Financing Administration containing the information required to be reported under section 1124 by disclosing entities.

"(iii) A description of transactions, as specified by the Secretary, between the organization and a party in interest. Such transactions shall include—

"(I) any sale or exchange, or leasing of any property between the organization and a party in interest;

"(II) any furnishing for consideration of goods, services (including management services), or facilities between the organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

"(III) any lending of money or other extension of credit between an organization and a party in interest.

The Secretary may require that information reported respecting an organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

"(B) PARTY IN INTEREST DEFINED.—For the purposes of this paragraph, the term 'party in interest' means—

"(i) any director, officer, partner, or employee responsible for management or administration of a MedicarePlus organization, any person who is directly or indirectly the beneficial owner of more than 5 percent of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 percent of the organization, and, in the case of a MedicarePlus organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

"(ii) any entity in which a person described in clause (i)—

"(I) is an officer or director;

"(II) is a partner (if such entity is organized as a partnership);

"(III) has directly or indirectly a beneficial interest of more than 5 percent of the equity; or

"(IV) has a mortgage, deed of trust, note, or other interest valuing more than 5 percent of the assets of such entity;

"(iii) any person directly or indirectly controlling, controlled by, or under common control with an organization; and

"(iv) any spouse, child, or parent of an individual described in clause (i).

"(C) ACCESS TO INFORMATION.—Each MedicarePlus organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

"(4) LOAN INFORMATION.—The contract shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties.

"(e) ADDITIONAL CONTRACT TERMS.—The contract shall contain such other terms and conditions not inconsistent with this part (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

"(f) INTERMEDIATE SANCTIONS.—

"(1) IN GENERAL.—If the Secretary determines that a MedicarePlus organization with a contract under this section—

"(A) 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;

"(B) imposes net monthly premiums on individuals enrolled under this part in excess of the net monthly premiums permitted;

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

"(D) engages in any practice that would reasonably be expected to have the effect of denying or discouraging en-

rollment (except as permitted by this part) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

“(E) misrepresents or falsifies information that is furnished—

“(i) to the Secretary under this part, or

“(ii) to an individual or to any other entity under this part;

“(F) fails to comply with the requirements of section 1852(j)(3); or

“(G) employs or contracts with any individual or entity that is excluded from participation under this title under section 1128 or 1128A for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in paragraph (2).

“(2) REMEDIES.—The remedies described in this paragraph are—

“(A) civil money penalties of not more than $25,000 for each determination under paragraph (1) or, with respect to a determination under subparagraph (D) or (E)(i) of such paragraph, of not more than $100,000 for each such determination, plus, with respect to a determination under paragraph (1)(B), double the excess amount charged in violation of such paragraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under paragraph (1)(D), $15,000 for each individual not enrolled as a result of the practice involved,

“(B) suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

“(C) suspension of payment to the organization under this part for individuals enrolled after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

“(3) OTHER INTERMEDIATE SANCTIONS.—In the case of a MedicarePlus organization for which the Secretary makes a determination under subsection (c)(2) the basis of which is not described in paragraph (1), the Secretary may apply the following intermediate sanctions:

“(A) civil money penalties of not more than $25,000 for each determination under subsection (c)(2) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely af-

fecting) an individual covered under the organization's contract;

"(B) civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under subsection (h) during which the deficiency that is the basis of a determination under subsection (c)(2) exists; and

"(C) suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under subsection (c)(2) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.

"(4) PROCEEDINGS.—The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under paragraph (1) or (2) in the same manner as they apply to a civil money penalty or proceeding under section 1128A(a).

"(g) PROCEDURES FOR IMPOSING SANCTIONS.—The Secretary may terminate a contract with a MedicarePlus organization under this section or may impose the intermediate sanctions described in subsection (f) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

"(1) the Secretary provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under subsection (c)(2);

"(2) the Secretary shall impose more severe sanctions on organizations that have a history of deficiencies or that have not taken steps to correct deficiencies the Secretary has brought to their attention;

"(3) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

"(4) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.

"STANDARDS FOR MEDICAREPLUS AND MEDICARE INFORMATION TRANSACTIONS AND DATA ELEMENTS

"SEC. 1858. (a) ADOPTION OF STANDARDS FOR DATA ELEMENTS.—

"(1) IN GENERAL.—Pursuant to subsection (b), the Secretary shall adopt standards for information transactions and data elements of MedicarePlus and medicare information and modifications to the standards under this section that are—

"(A) consistent with the objective of reducing the administrative costs of providing and paying for health care; and

"(B) developed or modified by a standard setting organization (as defined in subsection (h)(8)).

"(2) SPECIAL RULE RELATING TO DATA ELEMENTS.—The Secretary may adopt or modify a standard relating to data elements that is different from the standard developed by a standard setting organization, if—

"(A) the different standard or modification will substantially reduce administrative costs to health care providers and health plans compared to the alternative; and

"(B) the standard or modification is promulgated in accordance with the rulemaking procedures of subchapter III of chapter 5 of title 5, United States Code.

"(3) SECURITY STANDARDS FOR HEALTH INFORMATION NETWORK.—

"(A) IN GENERAL.—Each person, who maintains or transmits MedicarePlus and medicare information or data elements of MedicarePlus and medicare information and is subject to this section, shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

"(i) to ensure the integrity and confidentiality of the information;

"(ii) to protect against any reasonably anticipated—

"(I) threats or hazards to the security or integrity of the information; and

"(II) unauthorized uses or disclosures of the information; and

"(iii) to otherwise ensure compliance with this section by the officers and employees of such person.

"(B) SECURITY STANDARDS.—The Secretary shall establish security standards and modifications to such standards with respect to MedicarePlus and medicare information network services, health plans, and health care providers that—

"(i) take into account—

"(I) the technical capabilities of record systems used to maintain MedicarePlus and medicare information;

"(II) the costs of security measures;

"(III) the need for training persons who have access to MedicarePlus and medicare information; and

"(IV) the value of audit trails in computerized record systems; and

"(ii) ensure that a MedicarePlus and medicare information network service, if it is part of a larger organization, has policies and security procedures which isolate the activities of such service with respect to processing information in a manner that prevents unauthorized access to such information by such larger organization.

The security standards established by the Secretary shall be based on the standards developed or modified by standard setting organizations. If such standards do not exist, the Secretary shall rely on the recommendations of the

MedicarePlus and Medicare Information Advisory Committee (established under subsection (g)) and shall consult with appropriate government agencies and private organizations in accordance with paragraph (5).

"(4) IMPLEMENTATION SPECIFICATIONS.—The Secretary shall establish specifications for implementing each of the standards and the modifications to the standards adopted pursuant to paragraph (1) or (3).

"(5) ASSISTANCE TO THE SECRETARY.—In complying with the requirements of this section, the Secretary shall rely on recommendations of the MedicarePlus and Medicare Information Advisory Committee established under subsection (g) and shall consult with appropriate Federal and State agencies and private organizations. The Secretary shall publish in the Federal Register the recommendations of the MedicarePlus and Medicare Information Advisory Committee regarding the adoption of a standard under this section.

"(b) STANDARDS FOR INFORMATION TRANSACTIONS AND DATA ELEMENTS.—

"(1) IN GENERAL.—The Secretary shall adopt standards for transactions and data elements to make MedicarePlus and medicare information uniformly available to be exchanged electronically, that is—

"(A) appropriate for the following financial and administrative transactions: claims (including coordination of benefits) or equivalent encounter information, enrollment and disenrollment, eligibility, premium payments, and referral certification and authorization; and

"(B) related to other financial and administrative transactions determined appropriate by the Secretary consistent with the goals of improving the operation of the health care system and reducing administrative costs.

"(2) UNIQUE HEALTH IDENTIFIERS.—

"(A) ADOPTION OF STANDARDS.—The Secretary shall adopt standards providing for a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the MedicarePlus and medicare information system. In developing unique health identifiers for each health plan and health care provider, the Secretary shall take into account multiple uses for identifiers and multiple locations and specialty classifications for health care providers.

"(B) PENALTY FOR IMPROPER DISCLOSURE.—A person who knowingly uses or causes to be used a unique health identifier under subparagraph (A) for a purpose that is not authorized by the Secretary shall—

"(i) be fined not more than $50,000, imprisoned not more than 1 year, or both; or

"(ii) if the offense is committed under false pretenses, be fined not more than $100,000, imprisoned not more than 5 years, or both.

"(3) CODE SETS.—

"(A) IN GENERAL.—The Secretary, in consultation with the MedicarePlus and Medicare Information Advisory Com-

mittee, experts from the private sector, and Federal and State agencies, shall—

"(i) select code sets for appropriate data elements from among the code sets that have been developed by private and public entities; or

"(ii) establish code sets for such data elements if no code sets for the data elements have been developed.

"(B) DISTRIBUTION.—The Secretary shall establish efficient and low-cost procedures for distribution (including electronic distribution) of code sets and modifications made to such code sets under subsection (c)(2).

"(4) ELECTRONIC SIGNATURE.—

"(A) IN GENERAL.—The Secretary, after consultation with the MedicarePlus and Medicare Information Advisory Committee, shall promulgate regulations specifying procedures for the electronic transmission and authentication of signatures, compliance with which will be deemed to satisfy Federal and State statutory requirements for written signatures with respect to information transactions required by this section and written signatures on enrollment and disenrollment forms.

"(B) PAYMENTS FOR SERVICES AND PREMIUMS.—Nothing in this section shall be construed to prohibit the payment of health care services or health plan premiums by debit, credit, payment card or numbers, or other electronic means.

"(5) TRANSFER OF INFORMATION BETWEEN HEALTH PLANS.—The Secretary shall develop rules and procedures—

"(A) for determining the financial liability of health plans when health care benefits are payable under two or more health plans; and

"(B) for transferring among health plans appropriate standard data elements needed for the coordination of benefits, the sequential processing of claims, and other data elements for individuals who have more than one health plan.

"(6) COORDINATION OF BENEFITS.—If, at the end of the 5-year period beginning on the date of the enactment of this section, the Secretary determines that additional transaction standards for coordinating benefits are necessary to reduce administrative costs or duplicative (or inappropriate) payment of claims, the Secretary shall establish further transaction standards for the coordination of benefits between health plans.

"(7) PROTECTION OF TRADE SECRETS.—Except as otherwise required by law, the standards adopted under this section shall not require disclosure of trade secrets or confidential commercial information by an entity operating a MedicarePlus and medicare information network.

"(c) TIMETABLES FOR ADOPTION OF STANDARDS.—

"(1) INITIAL STANDARDS.—Not later than 18 months after the date of the enactment of this section, the Secretary shall adopt standards relating to the information transactions, data elements of MedicarePlus and medicare information and security described in subsections (a) and (b).

"(2) ADDITIONS AND MODIFICATIONS TO STANDARDS.—

"(A) IN GENERAL.—The Secretary shall review the standards adopted under this section and shall adopt additional or modified standards, that have been developed or modified by a standard setting organization, as determined appropriate, but not more frequently than once every 12 months. Any addition or modification to such standards shall be completed in a manner which minimizes the disruption and cost of compliance.

"(B) ADDITIONS AND MODIFICATIONS TO CODE SETS.—

"(i) IN GENERAL.—The Secretary shall ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets.

"(ii) ADDITIONAL RULES.—If a code set is modified under this paragraph, the modified code set shall include instructions on how data elements of MedicarePlus and medicare information that were encoded prior to the modification may be converted or translated so as to preserve the informational value of the data elements that existed before the modification. Any modification to a code set under this paragraph shall be implemented in a manner that minimizes the disruption and cost of complying with such modification.

"(d) REQUIREMENTS FOR HEALTH PLANS.—

"(1) IN GENERAL.—If a person desires to conduct any of the information transactions described in subsection (b)(1) with a health plan as a standard transaction, the health plan shall conduct such standard transaction in a timely manner and the information transmitted or received in connection with such transaction shall be in the form of standard data elements of MedicarePlus and medicare information.

"(2) SATISFACTION OF REQUIREMENTS.—A health plan may satisfy the requirement imposed on such plan under paragraph (1) by directly transmitting standard data elements of MedicarePlus and medicare information or submitting nonstandard data elements to a MedicarePlus and medicare information network service for processing into standard data elements and transmission.

"(3) TIMETABLES FOR COMPLIANCE WITH REQUIREMENTS.—Not later than 24 months after the date on which standards are adopted under subsections (a) and (b) with respect to any type of information transaction or data element of MedicarePlus and medicare information or with respect to security, a health plan shall comply with the requirements of this section with respect to such transaction or data element.

"(4) COMPLIANCE WITH MODIFIED STANDARDS.—If the Secretary adopts a modified standard under subsection (a) or (b), a health plan shall be required to comply with the modified standard at such time as the Secretary determines appropriate taking into account the time needed to comply due to the nature and extent of the modification. However, the time determined appropriate under the preceding sentence shall be not earlier than the last day of the 180-day period beginning on the date

such modified standard is adopted. The Secretary may extend the time for compliance for small health plans, if the Secretary determines such extension is appropriate.

"(e) GENERAL PENALTY FOR FAILURE TO COMPLY WITH REQUIREMENTS AND STANDARDS.—

"(1) GENERAL PENALTY.—

"(A) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall impose on any person that violates a requirement or standard—

"(i) with respect to MedicarePlus and medicare information transactions, data elements of MedicarePlus and medicare information, or security imposed under subsection (a) or (b); or

"(ii) with respect to health plans imposed under subsection (d);

a penalty of not more than $100 for each such violation of a specific standard or requirement, but the total amount imposed for all such violations of a specific standard or requirement during the calendar year shall not exceed $25,000.

"(B) PROCEDURES.—The provisions of section 1128A (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to the imposition of a civil money penalty under this paragraph in the same manner as such provisions apply to the imposition of a penalty under such section 1128A.

"(C) DENIAL OF PAYMENT.—Except as provided in paragraph (2), the Secretary may deny payment under this title for an item or service furnished by a person if the person fails to comply with an applicable requirement or standard for MedicarePlus and medicare information relating to that item or service.

"(2) LIMITATIONS.—

"(A) NONCOMPLIANCE NOT DISCOVERED.—A penalty may not be imposed under paragraph (1) if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person failed to comply with the requirement or standard described in paragraph (1).

"(B) FAILURES DUE TO REASONABLE CAUSE.—

"(i) IN GENERAL.—Except as provided in clause (ii), a penalty may not be imposed under paragraph (1) if—

"(I) the failure to comply was due to reasonable cause and not to willful neglect; and

"(II) the failure to comply is corrected during the 30-day period beginning on the first date the person liable for the penalty knew, or by exercising reasonable diligence would have known, that the failure to comply occurred.

"(ii) EXTENSION OF PERIOD.—

"(I) NO PENALTY.—The period referred to in clause (i)(II) may be extended as determined ap-

propriate by the Secretary based on the nature and extent of the failure to comply.

"(II) ASSISTANCE.—If the Secretary determines that a health plan failed to comply because such plan was unable to comply, the Secretary may provide technical assistance to such plan during the period described in clause (i)(II). Such assistance shall be provided in any manner determined appropriate by the Secretary.

"(C) REDUCTION.—In the case of a failure to comply which is due to reasonable cause and not to willful neglect, any penalty under paragraph (1) that is not entirely waived under subparagraph (B) may be waived to the extent that the payment of such penalty would be excessive relative to the compliance failure involved.

"(f) EFFECT ON STATE LAW.—

"(1) GENERAL EFFECT.—

"(A) GENERAL RULE.—Except as provided in subparagraph (B), a provision, requirement, or standard under this section shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

"(B) EXCEPTIONS.—A provision, requirement, or standard under this section shall not supersede a contrary provision of State law if the Secretary determines that the provision of State law should be continued for any reason, including for reasons relating to prevention of fraud and abuse or regulation of controlled substances.

"(2) PUBLIC HEALTH REPORTING.—Nothing in this section shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.

"(g) MEDICAREPLUS AND MEDICARE INFORMATION ADVISORY COMMITTEE.—

"(1) ESTABLISHMENT.—There is established a committee to be known as the MedicarePlus and Medicare Information Advisory Committee (in this subsection referred to as the 'committee').

"(2) DUTIES.—The committee shall—

"(A) advise the Secretary in the development of standards under this section; and

"(B) be generally responsible for advising the Secretary and the Congress on the status and the future of the MedicarePlus and medicare information network.

"(3) MEMBERSHIP.—

"(A) IN GENERAL.—The committee shall consist of 9 members of whom—

"(i) 3 shall be appointed by the President;

“(ii) 3 shall be appointed by the Speaker of the House of Representatives after consultation with the minority leader of the House of Representatives; and

“(iii) 3 shall be appointed by the President pro tempore of the Senate after consultation with the minority leader of the Senate.

The appointments of the members shall be made not later than 60 days after the date of the enactment of this section. The President shall designate 1 member as the Chair.

“(B) EXPERTISE.—The membership of the committee shall consist of individuals who are of recognized standing and distinction in the areas of information systems, information networking and integration, consumer health, or health care financial management, and who possess the demonstrated capacity to discharge the duties imposed on the committee.

“(C) TERMS.—Each member of the committee shall be appointed for a term of 5 years, except that the members first appointed shall serve staggered terms such that the terms of not more than 3 members expire at one time.

“(D) INITIAL MEETING.—Not later than 30 days after the date on which a majority of the members have been appointed, the committee shall hold its first meeting.

“(4) REPORTS.—Not later than 1 year after the date of the enactment of this section, and annually thereafter, the committee shall submit to Congress and the Secretary a report regarding—

“(A) the extent to which entities using the MedicarePlus and medicare information network are meeting the standards adopted under this section and working together to form an integrated network that meets the needs of its users;

“(B) the extent to which such entities are meeting the security standards established pursuant to this section and the types of penalties assessed for noncompliance with such standards;

“(C) any problems that exist with respect to implementation of the MedicarePlus and medicare information network; and

“(D) the extent to which timetables under this section are being met.

Reports made under this subsection shall be made available to health care providers, health plans, and other entities that use the MedicarePlus and medicare information network to exchange MedicarePlus and medicare information.

“(h) DEFINITIONS.—For purposes of this section:

“(1) CODE SET.—The term ‘code set’ means any set of codes used for encoding data elements, such as tables of terms, enrollment information, and encounter data.

“(2) COORDINATION OF BENEFITS.—The term ‘coordination of benefits’ means determining and coordinating the financial obligations of health plans when health care benefits are payable under such a plan and under this title (including under a MedicarePlus plan).

"(3) MEDICAREPLUS AND MEDICARE INFORMATION.—The term 'MedicarePlus and medicare information' means any information that relates to the enrollment of individuals under this title (including information relating to elections of MedicarePlus plans under section 1851) and the provision of health benefits (including benefits provided under such plans) under this title.

"(4) MEDICAREPLUS AND MEDICARE INFORMATION NETWORK.—The term 'MedicarePlus and medicare information network' means the MedicarePlus and medicare information system that is formed through the application of the requirements and standards established under this section.

"(5) MEDICAREPLUS AND MEDICARE INFORMATION NETWORK SERVICE.—The term 'MedicarePlus and medicare information network service' means a public or private entity that—

"(A) processes or facilitates the processing of nonstandard data elements of MedicarePlus and medicare information into standard data elements;

"(B) provides the means by which persons may meet the requirements of this section; or

"(C) provides specific information processing services.

"(6) HEALTH PLAN.—The term 'health plan' means a plan which provides, or pays the cost of, health benefits. Such term includes the following, or any combination thereof:

"(A) Part A or part B of this title, and includes a MedicarePlus plan.

"(B) The medicaid program under title XIX and the MediGrant program under title XXI.

"(C) A medicare supplemental policy (as defined in section 1882(g)(1)).

"(D) Worker's compensation or similar insurance.

"(E) Automobile or automobile medical-payment insurance.

"(F) A long-term care policy, other than a fixed indemnity policy.

"(G) The Federal Employees Health Benefit Plan under chapter 89 of title 5, United States Code.

"(H) An employee welfare benefit plan, as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), but only to the extent the plan is established or maintained for the purpose of providing health benefits.

"(7) INDIVIDUALLY IDENTIFIABLE MEDICAREPLUS AND MEDICARE INFORMATION.—The term 'individually identifiable MedicarePlus and medicare information' means MedicarePlus and medicare enrollment information, including demographic information collected from an individual, that—

"(A) is created or received by a health care provider, health plan, employer, or MedicarePlus and medicare information network service, and

"(B) identifies an individual.

"(8) STANDARD SETTING ORGANIZATION.—The term 'standard setting organization' means a standard setting organization

accredited by the American National Standards Institute and includes the National Council for Prescription Drug Program.

"(9) STANDARD TRANSACTION.—The term 'standard transaction' means, when referring to an information transaction or to data elements of MedicarePlus and medicare information, any transaction that meets the requirements and implementation specifications adopted by the Secretary under subsections (a) and (b).

"DEFINITIONS; MISCELLANEOUS PROVISIONS

"SEC. 1859. (a) DEFINITIONS RELATING TO MEDICAREPLUS ORGANIZATIONS.—In this part—

"(1) MEDICAREPLUS ORGANIZATION.—The term 'MedicarePlus organization' means a public or private entity that is certified under section 1857 as meeting the requirements and standards of this part for such an organization.

"(2) PROVIDER-SPONSORED ORGANIZATION.—The term 'provider-sponsored organization' is defined in section 1853(e).

"(3) QUALIFIED ASSOCIATION SPONSOR.—The term 'qualified association sponsor' means an association, religious fraternal organization, or other organization (which may be a trade, industry, or professional association, a chamber of commerce, or a public entity association) that the Secretary finds—

"(A) is organized for purposes other than to market a health plan,

"(B) may not condition its membership on health status, health claims experience, receipt of health care, medical history, or lack of evidence of insurability of a potential member,

"(C) may not exclude a member or spouse of a member from health plan coverage based on factors described in clause (ii);

"(D) does not exist solely or principally for the purpose of selling insurance,

"(E) has at least 1,000 individual members or 200 employer members,

"(F) is a permanent entity which receives a substantial proportion of its financial support from active members; and

"(G) is not owned or controlled by an insurance company.

Such term includes a subsidiary or corporation that is wholly owned by one or more qualified organizations.

"(4) TAFT-HARTLEY SPONSOR.—The term 'Taft-Hartley sponsor' means, in relation to a group health plan that is established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of parties who establish or maintain the plan.

"(5) UNION SPONSOR.—The term 'union sponsor' means an employee organization in relation to a group health plan that is established or maintained by the organization other than pursuant to a collective bargaining agreement.

"(6) EMPLOYER, ETC.—In this subsection and section 1851(b), the terms 'employer', 'employee organization', and 'group health plan' have the meanings given such terms for purposes of part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974.

"(b) DEFINITIONS RELATING TO MEDICAREPLUS PLANS.—

"(1) MEDICAREPLUS PLAN.—The term 'MedicarePlus plan' means health benefits coverage offered under a policy, contract, or plan by a MedicarePlus organization pursuant to and in accordance with a contract under section 1857.

"(2) HIGH DEDUCTIBLE PLAN.—

"(A) IN GENERAL.—The term 'high deductible plan' means a MedicarePlus plan that—

"(i) provides reimbursement for at least the items and services described in section 1852(a)(1) in a year but only after the enrollee incurs countable expenses (as specified under the plan) equal to the amount of a deductible (described in subparagraph (B));

"(ii) counts as such expenses (for purposes of such deductible) at least all amounts that would have been payable under parts A and B or by the enrollee if the enrollee had elected to receive benefits through the provisions of such parts; and

"(iii) provides, after such deductible is met for a year and for all subsequent expenses for benefits referred to in clause (i) in the year, for a level of reimbursement that is not less than—

"(I) 100 percent of such expenses, or

"(II) 100 percent of the amounts that would have been paid (without regard to any deductibles or coinsurance) under parts A and B with respect to such expenses,

whichever is less.

"(B) DEDUCTIBLE.—The amount of deductible under a high deductible plan—

"(i) for contract year 1997 shall be not more than $6,000; and

"(ii) for a subsequent contract year shall be not more than the maximum amount of such deductible for the previous contract year under this subparagraph increased by the national average per capita growth percentage under section 1854(c)(6) for the year.

If the amount of the deductible under clause (ii) is not a multiple of $50, the amount shall be rounded to the nearest multiple of $50.

"(3) MEDICAREPLUS UNRESTRICTED FEE-FOR-SERVICE PLAN.—The term 'MedicarePlus unrestricted fee-for-service plan' means a MedicarePlus plan that provides for coverage of benefits without restrictions relating to utilization and without regard to whether the provider has a contract or other arrangement with the organization offering the plan for the provision of such benefits.

"(c) OTHER REFERENCES TO OTHER TERMS.—

"(1) MEDICAREPLUS ELIGIBLE INDIVIDUAL.—The term 'MedicarePlus eligible individual' is defined in section 1851(a)(3).

"(2) MEDICAREPLUS PAYMENT AREA.—The term 'MedicarePlus payment area' is defined in section 1854(d).

"(3) NATIONAL AVERAGE PER CAPITA GROWTH PERCENTAGE.—The 'national average per capita growth percentage' is defined in section 1854(c)(6).

"(4) MONTHLY PREMIUM; NET MONTHLY PREMIUM.—The terms 'monthly premium' and 'net monthly premium' are defined in section 1855(a)(2).

"(d) COORDINATED ACUTE AND LONG-TERM CARE BENEFITS UNDER A MEDICAREPLUS PLAN.—Nothing in this part shall be construed as preventing a State from coordinating benefits under its MediGrant program under title XXI with those provided under a MedicarePlus plan in a manner that assures continuity of a full-range of acute care and long-term care services to poor elderly or disabled individuals eligible for benefits under this title and under such program.".

(b) CONFORMING REFERENCES TO PREVIOUS PART C.—Any reference in law (in effect before the date of the enactment of this Act) to part C of title XVIII of the Social Security Act is deemed a reference to part D of such title (as in effect after such date).

(c) USE OF INTERIM, FINAL REGULATIONS.—In order to carry out the amendment made by subsection (a) in a timely manner, the Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(d) ADVANCE DIRECTIVES.—Section 1866(f)(1) (42 U.S.C. 1395cc(f)(1)) is amended—

(1) by inserting "1853(g)," after "1833(s),", and

(2) by inserting ", MedicarePlus organization," after "provider of services".

(e) CONFORMING AMENDMENT.—Section 1866(a)(1)(O) (42 U.S.C. 1395cc(a)(1)(O)) is amended by inserting before the semicolon at the end the following: "and in the case of hospitals to accept as payment in full for inpatient hospital services that are emergency services (as defined in section 1853(b)(4)) that are covered under this title and are furnished to any individual enrolled under part C with a MedicarePlus organization which does not have a contract establishing payment amounts for services furnished to members of the organization the amounts that would be made as a payment in full under this title if the individuals were not so enrolled".

(f) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this chapter.

SEC. 8002. DUPLICATION AND COORDINATION OF MEDICARE-RELATED PLANS.

(a) TREATMENT OF CERTAIN HEALTH INSURANCE POLICIES AS NONDUPLICATIVE.—

(1) IN GENERAL.—Section 1882(d)(3)(A) (42 U.S.C. 1395ss(d)(3)(A)) is amended—

(A) by amending clause (i) to read as follows:

"(i) It is unlawful for a person to sell or issue to an individual entitled to benefits under part A or enrolled under part B of this title or electing a MedicarePlus plan under section 1851—

"(I) a health insurance policy (other than a medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under this title or title XIX,

"(II) in the case of an individual not electing a MedicarePlus plan, a medicare supplemental policy with knowledge that the individual is entitled to benefits under another medicare supplemental policy, or

"(III) in the case of an individual electing a MedicarePlus plan, a medicare supplemental policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under this title or under another medicare supplemental policy.";

(B) in clause (iii), by striking "clause (i)" and inserting "clause (i)(II)"; and

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

"(iv) For purposes of this subparagraph a health insurance policy shall be considered to 'duplicate' benefits under this title only when, under its terms, the policy provides specific reimbursement for identical items and services to the extent paid for under this title, and a health insurance policy providing for benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual is not considered to 'duplicate' any health benefits under this title.

"(v) For purposes of this subparagraph, a health insurance policy (or a rider to an insurance contract which is not a health insurance policy), including a policy (such as a qualified long-term care insurance contract described in section 7702B(b) of the Internal Revenue Code of 1986, as added by the Revenue Reconciliation Act of 1995) providing benefits for long-term care, nursing home care, home health care, or community-based care, that coordinates against or excludes items and services available or paid for under this title and (for policies sold or issued after January 1, 1996) that discloses such coordination or exclusion in the policy's outline of coverage, is not considered to 'duplicate' health benefits under this title. For purposes of this clause, the terms 'coordinates' and 'coordination' mean, with respect to a policy in relation to health benefits under this title, that the policy under its terms is secondary to, or excludes from payment, items and services to the extent available or paid for under this title.

"(vi) A State may not impose, with respect to the sale or issuance of a policy (or rider) that meets the requirements of this title pursuant to clause (iv) or (v) to an individual entitled to benefits under part A or enrolled under part B or enrolled under a MedicarePlus plan under part C, any requirement based on the premise that such a policy or rider duplicates health benefits to which the individual is otherwise entitled under this title.".

(2) CONFORMING AMENDMENTS.—Section 1882(d)(3) (42 U.S.C. 1395ss(d)(3)) is amended—

(A) in subparagraph (B), by inserting "(including any MedicarePlus plan)" after "health insurance policies";

(B) in subparagraph (C)—

(i) by striking "with respect to (i)" and inserting "with respect to", and

(ii) by striking ", (ii) the sale" and all that follows up to the period at the end; and

(C) by striking subparagraph (D).

(3) MEDICAREPLUS PLANS NOT TREATED AS MEDICARE SUPPLEMENTARY POLICIES.—Section 1882(g)(1) (42 U.S.C. 1395ss(g)(1)) is amended by inserting "a MedicarePlus plan or" after "and does not include".

(b) ADDITIONAL RULES RELATING TO INDIVIDUALS ENROLLED IN MEDICAREPLUS PLANS.—Section 1882 (42 U.S.C. 1395ss) is further amended by adding at the end the following new subsection:

"(u)(1) Notwithstanding the previous provisions of this section, this section shall not apply to the sale or issuance of a medicare supplemental policy to an individual who has elected to enroll in a MedicarePlus plan under section 1851.

"(2)(A) It is unlawful for a person to sell or issue a policy described in subparagraph (B) to an individual with knowledge that the individual has in effect under section 1851 an election of a high deductible plan.

"(B) A policy described in this subparagraph is a health insurance policy that provides for coverage of expenses that are otherwise required to be counted toward meeting the annual deductible amount provided under the high deductible plan.".

SEC. 8003. TRANSITIONAL RULES FOR CURRENT MEDICARE HMO PROGRAM.

(a) IN GENERAL.—Section 1876 (42 U.S.C. 1395mm) is amended—

(1) in subsection (c)(3)(A)(i), by striking "would result in failure to meet the requirements of subsection (f) or";

(2) by amending subsection (f) to read as follows:

"(f)(1) Except as provided in paragraph (3), the Secretary shall not enter into, renew, or continue any risk-sharing contract under this section with an eligible organization for any contract year beginning on or after—

"(A) the date standards for MedicarePlus organizations and plans are first established under section 1856(a) with respect to MedicarePlus organizations that are insurers or health maintenance organizations, or

"(B) in the case of in the case of such an organization with such a contract in effect as of the date such standards were first established, 1 year after such date.

"(2) The Secretary shall not enter into, renew, or continue any risk-sharing contract under this section with an eligible organization for any contract year beginning on or after January 1, 2000.

"(3) An individual who is enrolled in part B only and is enrolled in an eligible organization with a risk-sharing contract under this section on December 31, 1996, may continue enrollment in such

organization. Not later then July 1, 1996, the Secretary shall issue regulations relating to such individuals and such organizations.

“(4) Notwithstanding subsection (a), the Secretary shall provide that payment amounts under risk-sharing contracts under this section for months in a year (beginning with January 1996) shall be computed—

“(A) with respect to individuals entitled to benefits under both parts A and B, by substituting payment rates under section 1854(a) for the payment rates otherwise established under subsection 1876(a), and

“(B) with respect to individuals only entitled to benefits under part B, by substituting an appropriate proportion of such rates (reflecting the relative proportion of payments under this title attributable to such part) for the payment rates otherwise established under subsection (a).

For purposes of carrying out this paragraph for payments for months in 1996, the Secretary shall compute, announce, and apply the payment rates under section 1854(a) (notwithstanding any deadlines specified in such section) in as timely a manner as possible and may (to the extent necessary) provide for retroactive adjustment in payments made under this section not in accordance with such rates.”; and

(3) in subsection (i)(1)(C), by striking “(e), and (f)” and inserting “and (e)”.

CHAPTER 2—SPECIAL RULES FOR MEDICAREPLUS MEDICAL SAVINGS ACCOUNTS

SEC. 8011. MEDICAREPLUS MSA.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to amounts specifically excluded from gross income) is amended by redesignating section 137 as section 138 and by inserting after section 136 the following new section:

“SEC. 137. MEDICAREPLUS MSA.

“(a) EXCLUSION.—Gross income shall not include any payment to the MedicarePlus MSA of an individual by the Secretary of Health and Human Services under part C of title XVIII of the Social Security Act.

“(b) MEDICAREPLUS MSA.—For purposes of this section—

“(1) MEDICAREPLUS MSA.—The term ‘MedicarePlus MSA’ means a medical savings account (as defined in section 222(d))—

“(A) which is designated as a MedicarePlus MSA,

“(B) notwithstanding section 222(f)(5), with respect to which no contribution may be made other than—

“(i) a contribution made by the Secretary of Health and Human Services pursuant to part C of title XVIII of the Social Security Act, or

“(ii) a trustee-to-trustee transfer described in subsection (c)(4), and

“(C) the governing instrument of which provides that trustee-to-trustee transfers described in subsection (c)(4) may be made to and from such account.

"(2) HIGH DEDUCTIBLE MSA.—The term 'High Deductible MedicarePlus MSA' means a MedicarePlus MSA which is established in connection with a high deductible plan described in section 1859(b)(2) of the Social Security Act.

"(3) REBATE MEDICAREPLUS MSA.—The term 'Rebate MedicarePlus MSA' means a MedicarePlus MSA other than a High Deductible MedicarePlus MSA.

"(c) SPECIAL RULES FOR DISTRIBUTIONS.—

"(1) DISTRIBUTIONS FOR QUALIFIED MEDICAL EXPENSES.—In applying section 222—

"(A) to a High Deductible MedicarePlus MSA, qualified medical expenses shall include only expenses for medical care of the account holder, and

"(B) to a Rebate MedicarePlus MSA, qualified medical expenses shall include only expenses for medical care of the account holder and of the spouse of the account holder if such spouse is entitled to benefits under part A of title XVIII of the Social Security Act and is enrolled under part B of such title.

"(2) PENALTY FOR DISTRIBUTIONS FROM HIGH DEDUCTIBLE MSA NOT USED FOR QUALIFIED MEDICAL EXPENSES IF MINIMUM BALANCE NOT MAINTAINED.—

"(A) IN GENERAL.—The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a High Deductible MedicarePlus MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be increased by 50 percent of the excess (if any) of—

"(i) the amount of such payment or distribution, over

"(ii) the excess (if any) of—

"(I) the fair market value of the assets in such MSA as of the close of the calendar year preceding the calendar year in which the taxable year begins, over

"(II) an amount equal to 60 percent of the deductible under the high deductible plan covering the account holder as of January 1 of the calendar year in which the taxable year begins.

Section 222(f)(2) shall not apply to any payment or distribution from a High Deductible MedicarePlus MSA.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

"(i) becomes disabled within the meaning of section 72(m)(7), or

"(ii) dies.

"(C) SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) all High Deductible MedicarePlus MSAs of the account holder shall be treated as 1 account,

"(ii) all payments and distributions not used exclusively to pay the qualified medical expenses of the ac-

count holder during any taxable year shall be treated as 1 distribution, and

"(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

"(3) WITHDRAWAL OF ERRONEOUS CONTRIBUTIONS.—Section 222(f)(2) and paragraph (2) of this subsection shall not apply to any payment or distribution from a MedicarePlus MSA to the Secretary of Health and Human Services of an erroneous contribution to such MSA and of the net income attributable to such contribution.

"(4) TRUSTEE-TO-TRUSTEE TRANSFERS.—Section 222(f)(2) and paragraph (2) of this subsection shall not apply to—

"(A) any trustee-to-trustee transfer from a High Deductible MedicarePlus MSA of an account holder to another High Deductible MedicarePlus MSA of such account holder, and

"(B) any trustee-to-trustee transfer from a Rebate MedicarePlus MSA of an account holder to another Rebate MedicarePlus MSA of such account holder.

"(d) SPECIAL RULES FOR TREATMENT OF ACCOUNT AFTER DEATH OF ACCOUNT HOLDER.—Notwithstanding section 222(f)(1)(B), if, as of the date of the death of the account holder, the spouse of such holder is not entitled to benefits under title XVIII of the Social Security Act, then after the date of such death—

"(1) the Secretary of Health and Human Services may not make any payments to such MedicarePlus MSA, other than payments attributable to periods before such date, and

"(2) such MSA shall be treated as medical savings account which is not a MedicarePlus MSA.

"(e) REPORTS.—In the case of a MedicarePlus MSA, the report under section 222(h)—

"(1) shall include the fair market value of the assets in such MedicarePlus MSA as of the close of each calendar year, and

"(2) shall be furnished to the account holder—

"(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

"(B) in such manner as the Secretary prescribes in such regulations."

(b) CONFORMING AMENDMENTS.—

(1) The last sentence of section 4973(d) of such Code, as added by section 11066(f)(4), is amended by "or section 137(c)(3)" after "section 222(f)(3)".

(2) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

"Sec. 137. MedicarePlus MSA.
"Sec. 138. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 8012. CERTAIN REBATES EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—Section 105 of the Internal Revenue Code of 1986 (relating to amounts received under accident and health plans) is amended by adding at the end the following new subsection:

"(j) CERTAIN REBATES UNDER SOCIAL SECURITY ACT.—Gross income does not include any rebate received under part C of title XVIII of the Social Security Act during the taxable year."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts received after the date of the enactment of this Act.

CHAPTER 3—MEDICARE PAYMENT REVIEW COMMISSION

SEC. 8021. MEDICARE PAYMENT REVIEW COMMISSION.

(a) IN GENERAL.—Title XVIII is amended by inserting after section 1804 the following new section:

"MEDICARE PAYMENT REVIEW COMMISSION

"SEC. 1805. (a) ESTABLISHMENT.—There is hereby established the Medicare Payment Review Commission (in this section referred to as the 'Commission').

"(b) DUTIES.—

"(1) GENERAL DUTIES AND REPORTS.—

"(A) IN GENERAL.—The Commission shall review, and make recommendations to Congress concerning, payment policies under this title.

"(B) ANNUAL REPORTS.—By not later than June 1 of each year, the Commission shall submit a report to Congress containing an examination of issues affecting the medicare program, including the implications of changes in health care delivery in the United States and in the market for health care services on the medicare program.

"(C) ADDITIONAL REPORTS.—The Commission may submit to Congress from time to time such other reports as the Commission deems appropriate. By not later than May 1, 1997, the Commission shall submit to Congress a report on the matter described in paragraph (2)(G).

"(D) AVAILABILITY OF REPORTS.—The Commission shall transmit to the Secretary a copy of each report submitted to Congress under this subsection and shall make such reports available to the public.

"(2) SPECIFIC DUTIES RELATING TO MEDICAREPLUS PROGRAM.—Specifically, the Commission shall review, with respect to the MedicarePlus program under part C—

"(A) the methodology for making payment to plans under such program, including the making of differential payments and the distribution of differential updates among different payment areas;

"(B) the mechanisms used to adjust payments for risk and the need to adjust such mechanisms to take into account health status of beneficiaries;

"(C) the implications of risk selection both among MedicarePlus organizations and between the MedicarePlus option and the Medicare fee-for-service option;

"(D) in relation to payment under part C, the development and implementation of mechanisms to assure the quality of care for those enrolled with MedicarePlus organizations;

"(E) the impact of the MedicarePlus program on access to care for medicare beneficiaries;

"(F) the feasibility and desirability of extending the rules for open enrollment that apply during the transition period to apply in each county during the first 2 years in which MedicarePlus plans are made available to individuals residing in the county; and

"(G) other major issues in implementation and further development of the MedicarePlus program.

"(3) SPECIFIC DUTIES RELATING TO THE FEE-FOR-SERVICE SYSTEM.—Specifically, the Commission shall review payment policies under parts A and B, including—

"(A) the factors affecting expenditures for services in different sectors, including the process for updating hospital, physician, and other fees,

"(B) payment methodologies; and

"(C) the impact of payment policies on access and quality of care for medicare beneficiaries.

"(4) SPECIFIC DUTIES RELATING TO INTERACTION OF PAYMENT POLICIES WITH HEALTH CARE DELIVERY GENERALLY.—Specifically the Commission shall review the effect of payment policies under this title on the delivery of health care services under this title and assess the implications of changes in the health services market on the medicare program.

"(c) MEMBERSHIP.—

"(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members appointed by the Comptroller General.

"(2) QUALIFICATIONS.—The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives, including physicians and other health professionals, employers, third party payors, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment. Such membership shall also include representatives of consumers and the elderly.

"(3) TERMS.—

"(A) IN GENERAL.—The terms of members of the Commission shall be for 3 years except that the Comptroller General shall designate staggered terms for the members first appointed.

"(B) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed

only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(4) COMPENSATION.—While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and while so serving away from home and member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, United States Code, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority. 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.

"(5) CHAIRMAN; VICE CHAIRMAN.—The Comptroller General shall designate a member of the Commission, at the time of appointment of the member, as Chairman and a member as Vice Chairman for that term of appointment.

"(6) MEETINGS.—The Commission shall meet at the call of the Chairman.

"(d) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—Subject to such review as the Comptroller General deems necessary to assure the efficient administration of the Commission, the Commission may—

"(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

"(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

"(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

"(4) make advance, progress, and other payments which relate to the work of the Commission;

"(5) provide transportation and subsistence for persons serving without compensation; and

"(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

"(e) POWERS.—

"(1) OBTAINING OFFICIAL DATA.—The Commission may 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, the head of that department or agency shall furnish that information to the Commission on an agreed upon schedule.

"(2) DATA COLLECTION.—In order to carry out its functions, the Commission shall collect and assess information to—

"(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section,

"(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate, and

"(C) adopt procedures allowing any interested party to submit information for the Commission's use in making reports and recommendations.

"(3) ACCESS OF GAO TO INFORMATION.—The Comptroller General shall have unrestricted access to all deliberations, records, and data of the Commission, immediately upon request.

"(4) PERIODIC AUDIT.—The Commission shall be subject to periodic audit by the General Accounting Office.

"(5) OPEN MEETINGS, ETC..—Pursuant to regulations of the Comptroller General, rules based upon the requirements of section 10 of the Federal Advisory Committee Act shall apply with respect to the Commission.

"(f) AUTHORIZATION OF APPROPRIATIONS.—

"(1) REQUEST FOR APPROPRIATIONS.—The Commission shall submit requests for appropriations in the same manner as the Comptroller General submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

"(2) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. 60 percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.".

(b) ABOLITION OF PROPAC AND PPRC.—

(1) PROPAC.—

(A) IN GENERAL.—Section 1886(e) (42 U.S.C. 1395ww(e)) is amended—

(i) by striking paragraphs (2) and (6); and

(ii) in paragraph (3), by striking "(A) The Commission" and all that follows through "(B)".

(B) CONFORMING AMENDMENT.—Section 1862 (42 U.S.C. 1395y) is amended by striking "Prospective Payment Assessment Commission" each place it appears in subsection (a)(1)(D) and subsection (i) and inserting "Medicare Payment Review Commission".

(2) PPRC.—

(A) IN GENERAL.—Title XVIII is amended by striking section 1845 (42 U.S.C. 1395w–1).

(B) CONFORMING AMENDMENTS.—

(i) Section 1834(b)(2) (42 U.S.C. 1395m(b)(2)) is amended by striking "Physician Payment Review Commission" and inserting "Medicare Payment Review Commission".

(ii) Section 1842(b) (42 U.S.C. 1395u(b)) is amended by striking "Physician Payment Review Commission" each place it appears in paragraphs (9)(D) and (14)(C)(i) and inserting "Medicare Payment Review Commission".

(iii) Section 1848 (42 U.S.C. 1395w–4) is amended by striking "Physician Payment Review Commission" and inserting "Medicare Payment Review Commission" each place it appears in paragraph (2)(A)(ii), (2)(B)(iii), and (5) of subsection (c), subsection (d)(2)(F), paragraphs (1)(B), (3), and (4)(A) of subsection (f), and paragraphs (6)(C) and (7)(C) of subsection (g).

(c) EFFECTIVE DATE; TRANSITION.—

(1) IN GENERAL.—The Comptroller General shall first provide for appointment of members to the Medicare Payment Review Commission (in this subsection referred to as "MPRC") by not later than September 30, 1996.

(2) TRANSITION.—Effective January 1, 1997, the Prospective Payment Assessment Commission (in this subsection referred to as "ProPAC") and the Physician Payment Review Commission (in this subsection referred to as "PPRC") are terminated and amendments made by subsection (b) shall become effective. The Comptroller General, to the maximum extent feasible, shall provide for the transfer to the MPRC of assets and staff of ProPAC and PPRC, without any loss of benefits or seniority by virtue of such transfers. Fund balances available to the ProPAC or PPRC for any period shall be available to the MPRC for such period for like purposes.

(3) CONTINUING RESPONSIBILITY FOR REPORTS.—The MPRC shall be responsible for the preparation and submission of reports required by law to be submitted (and which have not been submitted by the date of establishment of the MPRC) by the ProPAC and PPRC, and, for this purpose, any reference in law to either such Commission is deemed, after the appointment of the MPRC, to refer to the MPRC.

CHAPTER 4—TREATMENT OF HOSPITALS WHICH PARTICIPATE IN PROVIDER-SPONSORED ORGANIZATIONS

SEC. 8031. TREATMENT OF HOSPITALS WHICH PARTICIPATE IN PROVIDER-SPONSORED ORGANIZATIONS.

(a) IN GENERAL.—Section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.), as amended by title XI, is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) TREATMENT OF HOSPITALS PARTICIPATING IN PROVIDER-SPONSORED ORGANIZATIONS.—An organization shall not fail to be

treated as organized and operated exclusively for a charitable purpose for purposes of subsection (c)(3) solely because a hospital which is owned and operated by such organization participates in a provider-sponsored organization (as defined in section 1853 of the Social Security Act), whether or not the provider-sponsored organization is exempt from tax. For purposes of subsection (c)(3), any person with a material financial interest in such a provider-sponsored organization shall be treated as a private shareholder or individual with respect to the hospital.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle B—Health Care Fraud and Abuse Prevention

CHAPTER 1—FRAUD AND ABUSE CONTROL PROGRAM

SEC. 8101. FRAUD AND ABUSE CONTROL PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Title XI (42 U.S.C. 1301 et seq.) is amended by inserting after section 1128B the following new section:

''FRAUD AND ABUSE CONTROL PROGRAM

''SEC. 1128C. (a) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—Not later than January 1, 1996, the Secretary, acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

''(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans,

''(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

''(C) to facilitate the enforcement of the provisions of sections 1128, 1128A, and 1128B and other statutes applicable to health care fraud and abuse,

''(D) to provide for the modification and establishment of safe harbors and to issue interpretative rulings and special fraud alerts pursuant to section 1128D, and

''(E) to provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established under section 1128E.

''(2) COORDINATION WITH HEALTH PLANS.—In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

''(3) GUIDELINES.—

''(A) IN GENERAL.—The Secretary and the Attorney General shall issue guidelines to carry out the program under paragraph (1). The provisions of sections 553, 556,

and 557 of title 5, United States Code, shall not apply in the issuance of such guidelines.

"(B) INFORMATION GUIDELINES.—

"(i) IN GENERAL.—Such guidelines shall include guidelines relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

"(ii) CONFIDENTIALITY.—Such guidelines shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

"(iii) QUALIFIED IMMUNITY FOR PROVIDING INFORMATION.—The provisions of section 1157(a) (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section.

"(4) ENSURING ACCESS TO DOCUMENTATION.—The Inspector General of the Department of Health and Human Services is authorized to exercise such authority described in paragraphs (3) through (9) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) as necessary with respect to the activities under the fraud and abuse control program established under this subsection.

"(5) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this Act shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

"(b) ADDITIONAL USE OF FUNDS BY INSPECTOR GENERAL.—

"(1) REIMBURSEMENTS FOR INVESTIGATIONS.—The Inspector General of the Department of Health and Human Services is authorized to receive and retain for current use reimbursement for the costs of conducting investigations and audits and for monitoring compliance plans when such costs are ordered by a court, voluntarily agreed to by the payer, or otherwise.

"(2) CREDITING.—Funds received by the Inspector General under paragraph (1) as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.

"(c) HEALTH PLAN DEFINED.—For purposes of this section, the term 'health plan' means a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes—

"(1) a policy of health insurance;

"(2) a contract of a service benefit organization; and

"(3) a membership agreement with a health maintenance organization or other prepaid health plan.".

(b) ESTABLISHMENT OF HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT IN FEDERAL HOSPITAL INSURANCE TRUST FUND.—Section 1817 (42 U.S.C. 1395i) is amended by adding at the end the following new subsection:

"(k) HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—

"(1) ESTABLISHMENT.—There is hereby established in the Trust Fund an expenditure account to be known as the 'Health Care Fraud and Abuse Control Account' (in this subsection referred to as the 'Account').

"(2) APPROPRIATED AMOUNTS TO TRUST FUND.—

"(A) IN GENERAL.—There are hereby appropriated to the Trust Fund—

"(i) such gifts and bequests as may be made as provided in subparagraph (B);

"(ii) such amounts as may be deposited in the Trust Fund as provided in sections 8141(b) and 8142(c) of the Medicare Preservation Act of 1995, and title XI; and

"(iii) such amounts as are transferred to the Trust Fund under subparagraph (C).

"(B) AUTHORIZATION TO ACCEPT GIFTS.—The Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Trust Fund, for the benefit of the Account or any activity financed through the Account.

"(C) TRANSFER OF AMOUNTS.—The Managing Trustee shall transfer to the Trust Fund, under rules similar to the rules in section 9601 of the Internal Revenue Code of 1986, an amount equal to the sum of the following:

"(i) Criminal fines recovered in cases involving a Federal health care offense (as defined in section 982(a)(6)(B) of title 18, United States Code).

"(ii) Civil monetary penalties and assessments imposed in health care cases, including amounts recovered under titles XI, XVIII, and XXI, and chapter 38 of title 31, United States Code (except as otherwise provided by law).

"(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense.

"(iv) Penalties and damages obtained and otherwise creditable to miscellaneous receipts of the general fund of the Treasury obtained under sections 3729 through 3733 of title 31, United States Code (known as the False Claims Act), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator, for restitution or otherwise authorized by law).

"(3) APPROPRIATED AMOUNTS TO ACCOUNT FOR FRAUD AND ABUSE CONTROL PROGRAM, ETC.—

"(A) DEPARTMENTS OF HEALTH AND HUMAN SERVICES AND JUSTICE.—

"(i) IN GENERAL.—There are hereby appropriated to the Account from the Trust Fund such sums as the Secretary and the Attorney General certify are necessary to

carry out the purposes described in subparagraph (C), to be available without further appropriation, in an amount not to exceed—

“(I) for fiscal year 1996, $104,000,000, and

“(II) for each of the fiscal years 1997 through 2002, the limit for the preceding fiscal year, increased by 15 percent; and

“(III) for each fiscal year after fiscal year 2002, the limit for fiscal year 2002.

“(ii) MEDICARE AND MEDIGRANT ACTIVITIES.—For each fiscal year, of the amount appropriated in clause (i), the following amounts shall be available only for the purposes of the activities of the Office of the Inspector General of the Department of Health and Human Services with respect to the medicare and MediGrant programs—

“(I) for fiscal year 1996, not less than $60,000,000 and not more than $70,000,000;

“(II) for fiscal year 1997, not less than $80,000,000 and not more than $90,000,000;

“(III) for fiscal year 1998, not less than $90,000,000 and not more than $100,000,000;

“(IV) for fiscal year 1999, not less than $110,000,000 and not more than $120,000,000;

“(V) for fiscal year 2000, not less than $120,000,000 and not more than $130,000,000;

“(VI) for fiscal year 2001, not less than $140,000,000 and not more than $150,000,000; and

“(VII) for each fiscal year after fiscal year 2001, not less than $150,000,000 and not more than $160,000,000.

“(B) FEDERAL BUREAU OF INVESTIGATIONS.—There are hereby appropriated from the general fund of the United States Treasury and hereby appropriated to the Account for transfer to the Federal Bureau of Investigations to carry out the purposes described in subparagraph (C)(i), to be available without further appropriation—

“(i) for fiscal year 1996, $47,000,000;

“(ii) for fiscal year 1997, $56,000,000;

“(iii) for fiscal year 1998, $66,000,000;

“(iv) for fiscal year 1999, $76,000,000;

“(v) for fiscal year 2000, $88,000,000;

“(vi) for fiscal year 2001, $101,000,000; and

“(vii) for each fiscal year after fiscal year 2001, $114,000,000.

“(C) USE OF FUNDS.—The purposes described in this subparagraph are as follows:

“(i) GENERAL USE.—To cover the costs (including equipment, salaries and benefits, and travel and training) of the administration and operation of the health care fraud and abuse control program established under section 1128C(a), including the costs of—

"(I) prosecuting health care matters (through criminal, civil, and administrative proceedings);

"(II) investigations;

"(III) financial and performance audits of health care programs and operations;

"(IV) inspections and other evaluations; and

"(V) provider and consumer education regarding compliance with the provisions of title XI.

"(ii) USE BY STATE MEDIGRANT FRAUD CONTROL UNITS FOR INVESTIGATION REIMBURSEMENTS.—To reimburse the various State MediGrant fraud control units established under section 2134(a) upon request to the Secretary for the costs of the activities authorized under section 2134(b).

"(4) APPROPRIATED AMOUNTS TO ACCOUNT FOR MEDICARE INTEGRITY PROGRAM.—

"(A) IN GENERAL.—There are hereby appropriated to the Account from the Trust Fund for each fiscal year such amounts as are necessary to carry out the Medicare Integrity Program under section 1893, subject to subparagraph (B) and to be available without further appropriation.

"(B) AMOUNTS SPECIFIED.—The amount appropriated under subparagraph (A) for a fiscal year is as follows:

"(i) For fiscal year 1996, such amount shall be not less than $430,000,000 and not more than $440,000,000.

"(ii) For fiscal year 1997, such amount shall be not less than $490,000,000 and not more than $500,000,000.

"(iii) For fiscal year 1998, such amount shall be not less than $550,000,000 and not more than $560,000,000.

"(iv) For fiscal year 1999, such amount shall be not less than $620,000,000 and not more than $630,000,000.

"(v) For fiscal year 2000, such amount shall be not less than $670,000,000 and not more than $680,000,000.

"(vi) For fiscal year 2001, such amount shall be not less than $690,000,000 and not more than $700,000,000.

"(vii) For each fiscal year after fiscal year 2001, such amount shall be not less than $710,000,000 and not more than $720,000,000.

"(5) ANNUAL REPORT.—The Secretary and the Attorney General shall submit jointly an annual report to Congress on the amount of revenue which is generated and disbursed, and the justification for such disbursements, by the Account in each fiscal year.".

SEC. 8102. MEDICARE INTEGRITY PROGRAM.

(a) ESTABLISHMENT OF MEDICARE INTEGRITY PROGRAM.—Title XVIII is amended by adding at the end the following new section:

“MEDICARE INTEGRITY PROGRAM

“SEC. 1893. (a) ESTABLISHMENT OF PROGRAM.—There is hereby established the Medicare Integrity Program (in this section referred to as the ‘Program’) under which the Secretary shall promote the integrity of the medicare program by entering into contracts in accordance with this section with eligible private entities to carry out the activities described in subsection (b).

“(b) ACTIVITIES DESCRIBED.—The activities described in this subsection are as follows:

“(1) Review of activities of providers of services or other individuals and entities furnishing items and services for which payment may be made under this title (including skilled nursing facilities and home health agencies), including medical and utilization review and fraud review (employing similar standards, processes, and technologies used by private health plans, including equipment and software technologies which surpass the capability of the equipment and technologies used in the review of claims under this title as of the date of the enactment of this section).

“(2) Audit of cost reports.

“(3) Determinations as to whether payment should not be, or should not have been, made under this title by reason of section 1862(b), and recovery of payments that should not have been made.

“(4) Education of providers of services, beneficiaries, and other persons with respect to payment integrity and benefit quality assurance issues.

“(5) Developing (and periodically updating) a list of items of durable medical equipment in accordance with section 1834(a)(15) which are subject to prior authorization under such section.

“(c) ELIGIBILITY OF ENTITIES.—An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) if—

“(1) the entity has demonstrated capability to carry out such activities;

“(2) in carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General of the United States, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this title and in other cases arising out of such activities;

“(3) the entity demonstrates to the Secretary that the entity’s financial holdings, interests, or relationships will not interfere with its ability to perform the functions to be required by the contract in an effective and impartial manner; and

“(4) the entity meets such other requirements as the Secretary may impose.

In the case of the activity described in subsection (b)(5), an entity shall be deemed to be eligible to enter into a contract under the Program to carry out the activity if the entity is a carrier with a contract in effect under section 1842.

"(d) PROCESS FOR ENTERING INTO CONTRACTS.—The Secretary shall enter into contracts under the Program in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

"(1) The Secretary shall determine the appropriate number of separate contracts which are necessary to carry out the Program and the appropriate times at which the Secretary shall enter into such contracts.

"(2)(A) Except as provided in subparagraph (B), the provisions of section 1153(e)(1) shall apply to contracts and contracting authority under this section.

"(B) Competitive procedures must be used when entering into new contracts under this section, or at any other time considered appropriate by the Secretary, except that the Secretary may contract with entities that are carrying out the activities described in this section pursuant to agreements under section 1816 or contracts under section 1842 in effect on the date of the enactment of this section.

"(3) A contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

"(e) LIMITATION ON CONTRACTOR LIABILITY.—The Secretary shall by regulation provide for the limitation of a contractor's liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1157.".

(b) ELIMINATION OF FI AND CARRIER RESPONSIBILITY FOR CARRYING OUT ACTIVITIES SUBJECT TO PROGRAM.—

(1) RESPONSIBILITIES OF FISCAL INTERMEDIARIES UNDER PART A.—Section 1816 (42 U.S.C. 1395h) is amended by adding at the end the following new subsection:

"(l) No agency or organization may carry out (or receive payment for carrying out) any activity pursuant to an agreement under this section to the extent that the activity is carried out pursuant to a contract under the Medicare Integrity Program under section 1893.".

(2) RESPONSIBILITIES OF CARRIERS UNDER PART B.—Section 1842(c) (42 U.S.C. 1395u(c)) is amended by adding at the end the following new paragraph:

"(6) No carrier may carry out (or receive payment for carrying out) any activity pursuant to a contract under this subsection to the extent that the activity is carried out pursuant to a contract under the Medicare Integrity Program under section 1893. The previous sentence shall not apply with respect to the activity described in section 1893(b)(5) (relating to prior authorization of certain items of durable medical equipment under section 1834(a)(15)).".

SEC. 8103. BENEFICIARY INCENTIVE PROGRAMS.

(a) CLARIFICATION OF REQUIREMENT TO PROVIDE EXPLANATION OF MEDICARE BENEFITS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide an explanation of benefits under the medicare program under title XVIII of the Social Security Act with respect to each item or service

for which payment may be made under the program which is furnished to an individual, without regard to whether or not a deductible or coinsurance may be imposed against the individual with respect to the item or service.

(b) PROGRAM TO COLLECT INFORMATION ON FRAUD AND ABUSE.—

(1) ESTABLISHMENT OF PROGRAM.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall establish a program under which the Secretary shall encourage individuals to report to the Secretary information on individuals and entities who are engaging or who have engaged in acts or omissions which constitute grounds for the imposition of a sanction under section 1128, section 1128A, or section 1128B of the Social Security Act, or who have otherwise engaged in fraud and abuse against the medicare program for which there is a sanction provided under law. The program shall discourage provision of, and not consider, information which is frivolous or otherwise not relevant or material to the imposition of such a sanction.

(2) PAYMENT OF PORTION OF AMOUNTS COLLECTED.—If an individual reports information to the Secretary under the program established under paragraph (1) which serves as the basis for the collection by the Secretary or the Attorney General of any amount of at least $100 (other than any amount paid as a penalty under section 1128B of the Social Security Act), the Secretary may pay a portion of the amount collected to the individual (under procedures similar to those applicable under section 7623 of the Internal Revenue Code of 1986 to payments to individuals providing information on violations of such Code).

(c) PROGRAM TO COLLECT INFORMATION ON PROGRAM EFFICIENCY.—

(1) ESTABLISHMENT OF PROGRAM.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall establish a program under which the Secretary shall encourage individuals to submit to the Secretary suggestions on methods to improve the efficiency of the medicare program.

(2) PAYMENT OF PORTION OF PROGRAM SAVINGS.—If an individual submits a suggestion to the Secretary under the program established under paragraph (1) which is adopted by the Secretary and which results in savings to the program, the Secretary may make a payment to the individual of such amount as the Secretary considers appropriate.

SEC. 8104. APPLICATION OF CERTAIN HEALTH ANTI-FRAUD AND ABUSE SANCTIONS TO FRAUD AND ABUSE AGAINST FEDERAL HEALTH CARE PROGRAMS.

(a) IN GENERAL.—Section 1128B (42 U.S.C. 1320a–7b) is amended as follows:

(1) In the heading, by striking "MEDICARE OR STATE HEALTH CARE PROGRAMS" and inserting "FEDERAL HEALTH CARE PROGRAMS".

(2) In subsection (a)(1), by striking "a program under title XVIII or a State health care program (as defined in section 1128(h))" and inserting "a Federal health care program".

(3) In subsection (a)(5), by striking "a program under title XVIII or a State health care program" and inserting "a Federal health care program".

(4) In the second sentence of subsection (a)—

(A) by striking "a State plan approved under title XIX" and inserting "a Federal health care program", and

(B) by striking "the State may at its option (notwithstanding any other provision of that title or of such plan)" and inserting "the administrator of such program may at its option (notwithstanding any other provision of such program)".

(5) In subsection (b), by striking "title XVIII or a State health care program" each place it appears and inserting "a Federal health care program".

(6) In subsection (c), by inserting "(as defined in section 1128(h))" after "a State health care program".

(7) By adding at the end the following new subsection:

"(f) For purposes of this section, the term 'Federal health care program' means—

"(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government; or

"(2) any State health care program, as defined in section 1128(h).".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

SEC. 8105. GUIDANCE REGARDING APPLICATION OF HEALTH CARE FRAUD AND ABUSE SANCTIONS.

Title XI (42 U.S.C. 1301 et seq.), as amended by section 8101, is amended by inserting after section 1128C the following new section:

"GUIDANCE REGARDING APPLICATION OF HEALTH CARE FRAUD AND ABUSE SANCTIONS

"SEC. 1128D. (a) SOLICITATION AND PUBLICATION OF MODIFICATIONS TO EXISTING SAFE HARBORS AND NEW SAFE HARBORS.—

"(1) IN GENERAL.—

"(A) SOLICITATION OF PROPOSALS FOR SAFE HARBORS.—Not later than January 1, 1996, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

"(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

"(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) and shall not serve as the basis for an exclusion under section 1128(b)(7);

"(iii) interpretive rulings to be issued pursuant to subsection (b); and

"(iv) special fraud alerts to be issued pursuant to subsection (c).

"(B) PUBLICATION OF PROPOSED MODIFICATIONS AND PROPOSED ADDITIONAL SAFE HARBORS.—After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

"(C) REPORT.—The Inspector General of the Department of Health and Human Services (in this section referred to as the 'Inspector General') shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

"(2) CRITERIA FOR MODIFYING AND ESTABLISHING SAFE HARBORS.—In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

"(A) An increase or decrease in access to health care services.

"(B) An increase or decrease in the quality of health care services.

"(C) An increase or decrease in patient freedom of choice among health care providers.

"(D) An increase or decrease in competition among health care providers.

"(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

"(F) An increase or decrease in the cost to Federal health care programs (as defined in section 1128B(f)).

"(G) An increase or decrease in the potential overutilization of health care services.

"(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

"(i) whether to order a health care item or service; or

"(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

“(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Federal health care programs (as so defined).

“(b) INTERPRETIVE RULINGS.—

“(1) IN GENERAL.—

“(A) REQUEST FOR INTERPRETIVE RULING.—Any person may present, at any time, a request to the Inspector General for a statement of the Inspector General’s current interpretation of the meaning of a specific aspect of the application of sections 1128A and 1128B (in this section referred to as an ‘interpretive ruling’).

“(B) ISSUANCE AND EFFECT OF INTERPRETIVE RULING.—

“(i) IN GENERAL.—If appropriate, the Inspector General shall in consultation with the Attorney General, issue an interpretive ruling not later than 90 days after receiving a request described in subparagraph (A). Interpretive rulings shall not have the force of law and shall be treated as an interpretive rule within the meaning of section 553(b) of title 5, United States Code. All interpretive rulings issued pursuant to this clause shall be published in the Federal Register or otherwise made available for public inspection.

“(ii) REASONS FOR DENIAL.—If the Inspector General does not issue an interpretive ruling in response to a request described in subparagraph (A), the Inspector General shall notify the requesting party of such decision not later than 60 days after receiving such a request and shall identify the reasons for such decision.

“(2) CRITERIA FOR INTERPRETIVE RULINGS.—

“(A) IN GENERAL.—In determining whether to issue an interpretive ruling under paragraph (1)(B), the Inspector General may consider—

“(i) whether and to what extent the request identifies an ambiguity within the language of the statute, the existing safe harbors, or previous interpretive rulings; and

“(ii) whether the subject of the requested interpretive ruling can be adequately addressed by interpretation of the language of the statute, the existing safe harbor rules, or previous interpretive rulings, or whether the request would require a substantive ruling (as defined in section 552 of title 5, United States Code) not authorized under this subsection.

“(B) NO RULINGS ON FACTUAL ISSUES.—The Inspector General shall not give an interpretive ruling on any factual issue, including the intent of the parties or the fair market value of particular leased space or equipment.

“(c) SPECIAL FRAUD ALERTS.—

“(1) IN GENERAL.—

“(A) REQUEST FOR SPECIAL FRAUD ALERTS.—Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under the medicare program or a State

health care program, as defined in section 1128(h) (in this subsection referred to as a 'special fraud alert').

"(B) ISSUANCE AND PUBLICATION OF SPECIAL FRAUD ALERTS.—Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

"(2) CRITERIA FOR SPECIAL FRAUD ALERTS.—In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

"(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2); and

"(B) the volume and frequency of the conduct that would be identified in the special fraud alert.".

CHAPTER 2—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

SEC. 8111. MANDATORY EXCLUSION FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS.

(a) INDIVIDUAL CONVICTED OF FELONY RELATING TO HEALTH CARE FRAUD.—

(1) IN GENERAL.—Section 1128(a) (42 U.S.C. 1320a–7(a)) is amended by adding at the end the following new paragraph:

"(3) FELONY CONVICTION RELATING TO HEALTH CARE FRAUD.—Any individual or entity that has been convicted after the date of the enactment of the Medicare Preservation Act of 1995, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.".

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 1128(b) (42 U.S.C. 1320a–7(b)) is amended to read as follows:

"(1) CONVICTION RELATING TO FRAUD.—Any individual or entity that has been convicted after the date of the enactment of the Medicare Preservation Act of 1995, under Federal or State law—

"(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

"(i) in connection with the delivery of a health care item or service, or

"(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1)) operated by or financed in whole or in part by any Federal, State, or local government agency; or

"(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.".

(b) INDIVIDUAL CONVICTED OF FELONY RELATING TO CONTROLLED SUBSTANCE.—

(1) IN GENERAL.—Section 1128(a) (42 U.S.C. 1320a–7(a)), as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(4) FELONY CONVICTION RELATING TO CONTROLLED SUBSTANCE.—Any individual or entity that has been convicted after the date of the enactment of the Medicare Preservation Act of 1995, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.".

(2) CONFORMING AMENDMENT.—Section 1128(b)(3) (42 U.S.C. 1320a–7(b)(3)) is amended—

(A) in the heading, by striking "CONVICTION" and inserting "MISDEMEANOR CONVICTION"; and

(B) by striking "criminal offense" and inserting "criminal offense consisting of a misdemeanor".

SEC. 8112. ESTABLISHMENT OF MINIMUM PERIOD OF EXCLUSION FOR CERTAIN INDIVIDUALS AND ENTITIES SUBJECT TO PERMISSIVE EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128(c)(3) (42 U.S.C. 1320a–7(c)(3)) is amended by adding at the end the following new subparagraphs:

"(D) In the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b), the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

"(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

"(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B), the period of the exclusion shall be not less than 1 year.".

SEC. 8113. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH OWNERSHIP OR CONTROL INTEREST IN SANCTIONED ENTITIES.

Section 1128(b) (42 U.S.C. 1320a–7(b)) is amended by adding at the end the following new paragraph:

"(15) INDIVIDUALS CONTROLLING A SANCTIONED ENTITY.—(A) Any individual—

"(i) who has a direct or indirect ownership or control interest in a sanctioned entity and who knows or should know (as defined in section 1128A(i)(6)) of the action con-

stituting the basis for the conviction or exclusion described in subparagraph (B); or

“(ii) who is an officer or managing employee (as defined in section 1126(b)) of such an entity.

“(B) For purposes of subparagraph (A), the term ‘sanctioned entity’ means an entity—

“(i) that has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection; or

“(ii) that has been excluded from participation under a program under title XVIII or under a State health care program.”.

SEC. 8114. SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.

(a) MINIMUM PERIOD OF EXCLUSION FOR PRACTITIONERS AND PERSONS FAILING TO MEET STATUTORY OBLIGATIONS.—

(1) IN GENERAL.—The second sentence of section 1156(b)(1) (42 U.S.C. 1320c–5(b)(1)) is amended by striking “may prescribe)” and inserting “may prescribe, except that such period may not be less than 1 year)”.

(2) CONFORMING AMENDMENT.—Section 1156(b)(2) (42 U.S.C. 1320c–5(b)(2)) is amended by striking “shall remain” and inserting “shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain”.

(b) REPEAL OF “UNWILLING OR UNABLE” CONDITION FOR IMPOSITION OF SANCTION.—Section 1156(b)(1) (42 U.S.C. 1320c–5(b)(1)) is amended—

(1) in the second sentence, by striking “and determines” and all that follows through “such obligations,”; and

(2) by striking the third sentence.

SEC. 8115. INTERMEDIATE SANCTIONS FOR MEDICARE HEALTH MAINTENANCE ORGANIZATIONS.

(a) APPLICATION OF INTERMEDIATE SANCTIONS FOR ANY PROGRAM VIOLATIONS.—

(1) IN GENERAL.—Section 1876(i)(1) (42 U.S.C. 1395mm(i)(1)) is amended by striking “the Secretary may terminate” and all that follows and inserting “in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

“(A) has failed substantially to carry out the contract;

“(B) is carrying out the contract in a manner substantially inconsistent with the efficient and effective administration of this section; or

“(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f).”.

(2) OTHER INTERMEDIATE SANCTIONS FOR MISCELLANEOUS PROGRAM VIOLATIONS.—Section 1876(i)(6) (42 U.S.C. 1395mm(i)(6)) is amended by adding at the end the following new subparagraph:

“(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1) the basis of

which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

"(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

"(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

"(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.".

(3) PROCEDURES FOR IMPOSING SANCTIONS.—Section 1876(i) (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

"(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

"(A) the Secretary first provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under paragraph (1) and the organization fails to develop or implement such a plan;

"(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an organization has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to the organization's attention;

"(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

"(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.".

(4) CONFORMING AMENDMENTS.—Section 1876(i)(6)(B) (42 U.S.C. 1395mm(i)(6)(B)) is amended by striking the second sentence.

(b) AGREEMENTS WITH PEER REVIEW ORGANIZATIONS.—Section 1876(i)(7)(A) (42 U.S.C. 1395mm(i)(7)(A)) is amended by striking "an agreement" and inserting "a written agreement".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1996.

SEC. 8116. ADDITIONAL EXCEPTION TO ANTI-KICKBACK PENALTIES FOR DISCOUNTING AND MANAGED CARE ARRANGEMENTS.

(a) IN GENERAL.—Section 1128B(b)(3) (42 U.S.C. 1320a-7b(b)(3)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

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

"(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is a MedicarePlus organization under part C of title XVIII or if the written agreement places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide, whether through a withhold, capitation, incentive pool, per diem payment, or any other similar risk arrangement which places the individual or entity at substantial financial risk.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to written agreements entered into on or after January 1, 1996.

SEC. 8117. PENALTIES FOR THE FRAUDULENT CONVERSION OF ASSETS IN ORDER TO OBTAIN STATE HEALTH CARE PROGRAM BENEFITS.

Section 1128B(a) (42 U.S.C. 1320a–7b(a)) is amended by striking "or" at the end of paragraph (4), by inserting "or" at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph:

"(6) knowingly and willfully converts assets, by transfer (including any transfer in trust), aiding in such a transfer, or otherwise, in order for an individual to become eligible for benefits under a State health care program,".

SEC. 8118. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this chapter shall take effect January 1, 1996.

CHAPTER 3—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 8121. ESTABLISHMENT OF THE HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM.

(a) IN GENERAL.—Title XI (42 U.S.C. 1301 et seq.), as amended by sections 8101 and 8105, is amended by inserting after section 1128D the following new section:

"HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM

"SEC. 1128E. (a) GENERAL PURPOSE.—Not later than January 1, 1996, the Secretary shall establish a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (c).

"(b) REPORTING OF INFORMATION.—

"(1) IN GENERAL.—Each government agency and health plan shall report any final adverse action (not including settle-

ments in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

"(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) includes:

"(A) The name and TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

"(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner is affiliated or associated.

"(C) The nature of the final adverse action and whether such action is on appeal.

"(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

"(3) CONFIDENTIALITY.—In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

"(4) TIMING AND FORM OF REPORTING.—The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

"(5) TO WHOM REPORTED.—The information required to be reported under this subsection shall be reported to the Secretary.

"(c) DISCLOSURE AND CORRECTION OF INFORMATION.—

"(1) DISCLOSURE.—With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section respecting a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

"(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

"(B) procedures in the case of disputed accuracy of the information.

"(2) CORRECTIONS.—Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

"(d) ACCESS TO REPORTED INFORMATION.—

"(1) AVAILABILITY.—The information in this database shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

"(2) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for the disclosure of information in this database (other than with respect to requests by Federal

agencies). The amount of such a fee shall be sufficient to recover the full costs of operating the database. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.

"(e) PROTECTION FROM LIABILITY FOR REPORTING.—No person or entity, including the agency designated by the Secretary in subsection (b)(5) shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

"(1) FINAL ADVERSE ACTION.—

"(A) IN GENERAL.—The term 'final adverse action' includes:

"(i) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service.

"(ii) Federal or State criminal convictions related to the delivery of a health care item or service.

"(iii) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

"(I) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

"(II) any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or

"(III) any other negative action or finding by such Federal or State agency that is publicly available information.

"(iv) Exclusion from participation in Federal or State health care programs.

"(v) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

"(B) EXCEPTION.—The term does not include any action with respect to a malpractice claim.

"(2) PRACTITIONER.—The terms 'licensed health care practitioner', 'licensed practitioner', and 'practitioner' mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

"(3) GOVERNMENT AGENCY.—The term 'Government agency' shall include:

"(A) The Department of Justice.

"(B) The Department of Health and Human Services.

"(C) Any other Federal agency that either administers or provides payment for the delivery of health care services,

including, but not limited to the Department of Defense and the Veterans' Administration.

"(D) State law enforcement agencies.

"(E) State MediGrant fraud control units.

"(F) Federal or State agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

"(4) HEALTH PLAN.—The term 'health plan' has the meaning given such term by section 1128C(c).

"(5) DETERMINATION OF CONVICTION.—For purposes of paragraph (1), the existence of a conviction shall be determined under paragraph (4) of section 1128(i).".

(b) IMPROVED PREVENTION IN ISSUANCE OF MEDICARE PROVIDER NUMBERS.—Section 1842(r) (42 U.S.C. 1395u(r)) is amended by adding at the end the following new sentence: "Under such system, the Secretary may impose appropriate fees on such physicians to cover the costs of investigation and recertification activities with respect to the issuance of the identifiers.".

CHAPTER 4—CIVIL MONETARY PENALTIES

SEC. 8131. SOCIAL SECURITY ACT CIVIL MONETARY PENALTIES.

(a) GENERAL CIVIL MONETARY PENALTIES.—Section 1128A (42 U.S.C. 1320a–7a) is amended as follows:

(1) In the third sentence of subsection (a), by striking "programs under title XVIII" and inserting "Federal health care programs (as defined in section 1128B(f)(1))".

(2) In subsection (f)—

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

(B) by inserting after paragraph (2) the following new paragraph:

"(3) With respect to amounts recovered arising out of a claim under a Federal health care program (as defined in section 1128B(f)), the portion of such amounts as is determined to have been paid by the program shall be repaid to the program, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Medicare Preservation Act of 1995 (as estimated by the Secretary) shall be deposited into the Federal Hospital Insurance Trust Fund pursuant to section 1817(k)(2)(C).".

(3) In subsection (i)—

(A) in paragraph (2), by striking "title V, XVIII, XIX, or XX of this Act" and inserting "a Federal health care program (as defined in section 1128B(f))",

(B) in paragraph (4), by striking "a health insurance or medical services program under title XVIII or XIX of this Act" and inserting "a Federal health care program (as so defined)", and

(C) in paragraph (5), by striking "title V, XVIII, XIX, or XX" and inserting "a Federal health care program (as so defined)".

(4) By adding at the end the following new subsection:

"(m)(1) For purposes of this section, with respect to a Federal health care program not contained in this Act, references to the Sec-

retary in this section shall be deemed to be references to the Secretary or Administrator of the department or agency with jurisdiction over such program and references to the Inspector General of the Department of Health and Human Services in this section shall be deemed to be references to the Inspector General of the applicable department or agency.

“(2)(A) The Secretary and Administrator of the departments and agencies referred to in paragraph (1) may include in any action pursuant to this section, claims within the jurisdiction of other Federal departments or agencies as long as the following conditions are satisfied:

“(i) The case involves primarily claims submitted to the Federal health care programs of the department or agency initiating the action.

“(ii) The Secretary or Administrator of the department or agency initiating the action gives notice and an opportunity to participate in the investigation to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

“(B) If the conditions specified in subparagraph (A) are fulfilled, the Inspector General of the department or agency initiating the action is authorized to exercise all powers granted under the Inspector General Act of 1978 with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies.”.

(b) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP OR CONTROL INTEREST IN PARTICIPATING ENTITY.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

(1) by striking “or” at the end of paragraph (1)(D);

(2) by striking “, or” at the end of paragraph (2) and inserting a semicolon;

(3) by striking the semicolon at the end of paragraph (3) and inserting “; or”; and

(4) by inserting after paragraph (3) the following new paragraph:

“(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under title XVIII or a State health care program in accordance with this subsection or under section 1128 and who, at the time of a violation of this subsection—

“(i) retains a direct or indirect ownership or control interest in an entity that is participating in a program under title XVIII or a State health care program, and who knows or should know of the action constituting the basis for the exclusion; or

“(ii) is an officer or managing employee (as defined in section 1126(b)) of such an entity;”.

(c) MODIFICATIONS OF AMOUNTS OF PENALTIES AND ASSESSMENTS.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)), as amended by subsection (b), is amended in the matter following paragraph (4)—

(1) by striking “$2,000” and inserting “$10,000”;

(2) by inserting "; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs" after "false or misleading information was given"; and

(3) by striking "twice the amount" and inserting "3 times the amount".

(d) CLAIM FOR ITEM OR SERVICE BASED ON INCORRECT CODING OR MEDICALLY UNNECESSARY SERVICES.—Section 1128A(a)(1) (42 U.S.C. 1320a–7a(a)(1)) is amended—

(1) in subparagraph (A) by striking "claimed," and inserting "claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,";

(2) in subparagraph (C), by striking "or" at the end;

(3) in subparagraph (D), by striking "; or" and inserting ", or"; and

(4) by inserting after subparagraph (D) the following new subparagraph:

"(E) is for a medical or other item or service that a person knows or should know is not medically necessary; or".

(e) SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.—Section 1156(b)(3) (42 U.S.C. 1320c–5(b)(3)) is amended by striking "the actual or estimated cost" and inserting "up to $10,000 for each instance".

(f) PROCEDURAL PROVISIONS.—Section 1876(i)(6) (42 U.S.C. 1395mm(i)(6)), as amended by section 8115(a)(2), is amended by adding at the end the following new subparagraph:

"(D) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (B)(i) or (C)(i) in the same manner as such provisions apply to a civil money penalty or proceeding under section 1128A(a).".

(g) PROHIBITION AGAINST OFFERING INDUCEMENTS TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR PLANS.—

(1) OFFER OF REMUNERATION.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

(A) by striking "or" at the end of paragraph (1)(D);

(B) by striking ", or" at the end of paragraph (2) and inserting a semicolon;

(C) by striking the semicolon at the end of paragraph (3) and inserting "; or"; and

(D) by inserting after paragraph (3) the following new paragraph:

"(4) offers to or transfers remuneration to any individual eligible for benefits under title XVIII of this Act, or under a State health care program (as defined in section 1128(h)) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under title XVIII, or a State health care program (as so defined);".

(2) REMUNERATION DEFINED.—Section 1128A(i) (42 U.S.C. 1320a–7a(i)) is amended by adding the following new paragraph:

“(6) The term ‘remuneration’ includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term ‘remuneration’ does not include—

“(A) the waiver of coinsurance and deductible amounts by a person, if—

“(i) the waiver is not offered as part of any advertisement or solicitation;

“(ii) the person does not routinely waive coinsurance or deductible amounts; and

“(iii) the person—

“(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need;

“(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts; or

“(III) provides for any permissible waiver as specified in section 1128B(b)(3) or in regulations issued by the Secretary;

“(B) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all beneficiaries, third party payers, and providers, to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary not later than 180 days after the date of the enactment of the Medicare Preservation Act of 1995; or

“(C) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations so promulgated.”.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1996.

SEC. 8132. CLARIFICATION OF LEVEL OF INTENT REQUIRED FOR IMPOSITION OF SANCTIONS.

(a) CLARIFICATION OF LEVEL OF KNOWLEDGE REQUIRED FOR IMPOSITION OF CIVIL MONETARY PENALTIES.—

(1) IN GENERAL.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

(A) in paragraphs (1) and (2), by inserting “knowingly” before “presents” each place it appears; and

(B) in paragraph (3), by striking “gives” and inserting “knowingly gives or causes to be given”.

(2) DEFINITION OF STANDARD.—Section 1128A(i) (42 U.S.C. 1320a–7a(i)) is amended by adding at the end the following new paragraph:

“(6) The term ‘should know’ means that a person, with respect to information—

“(A) acts in deliberate ignorance of the truth or falsity of the information; or

"(B) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to acts or omissions occurring on or after January 1, 1996.

SEC. 8133. PENALTY FOR FALSE CERTIFICATION FOR HOME HEALTH SERVICES.

(a) IN GENERAL.—Section 1128A(b) (42 U.S.C. 1320a–7a(b)) is amended by adding at the end the following new paragraph:

"(3)(A) Any physician who executes a document described in subparagraph (B) with respect to an individual knowing that all of the requirements referred to in such subparagraph are not met with respect to the individual shall be subject to a civil monetary penalty of not more than the greater of—

"(i) $5,000, or

"(ii) three times the amount of the payments under title XVIII for home health services which are made pursuant to such certification.

"(B) A document described in this subparagraph is any document that certifies, for purposes of title XVIII, that an individual meets the requirements of section 1814(a)(2)(C) or 1835(a)(2)(A) in the case of home health services furnished to the individual.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to certifications made on or after the date of the enactment of this Act.

CHAPTER 5—AMENDMENTS TO CRIMINAL LAW

SEC. 8141. HEALTH CARE FRAUD.

(a) IN GENERAL.—

(1) FINES AND IMPRISONMENT FOR HEALTH CARE FRAUD VIOLATIONS.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1347. Health care fraud

"(a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—

"(1) to defraud any Federal health care program, in connection with the delivery of or payment for health care benefits, items, or services; or

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any Federal health care program in connection with the delivery of or payment for health care benefits, items, or services;

shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365(g)(3) of this title), such person may be imprisoned for any term of years.

"(b) For purposes of this section, the term 'Federal health care program' has the same meaning given such term in section 1128B(f) of the Social Security Act.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1347. Health care fraud.".

(b) CRIMINAL FINES DEPOSITED IN FEDERAL HOSPITAL INSURANCE TRUST FUND.—The Secretary of the Treasury shall deposit into the Federal Hospital Insurance Trust Fund pursuant to section 1817(k)(2)(C) of the Social Security Act, as added by section 8101(b), an amount equal to the criminal fines imposed under section 1347 of title 18, United States Code (relating to health care fraud).

SEC. 8142. FORFEITURES FOR FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Section 982(a) of title 18, United States Code, is amended by adding after paragraph (5) the following new paragraph:

"(6)(A) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

"(B) For purposes of this paragraph, the term 'Federal health care offense' means a violation of, or a criminal conspiracy to violate—

"(i) section 1347 of this title;

"(ii) section 1128B of the Social Security Act; and

"(iii) sections 287, 371, 664, 666, 669, 1001, 1027, 1341, 1343, 1920, or 1954 of this title if the violation or conspiracy relates to health care fraud.".

(b) CONFORMING AMENDMENT.—Section 982(b)(1)(A) of title 18, United States Code, is amended by inserting "or (a)(6)" after "(a)(1)".

(c) PROPERTY FORFEITED DEPOSITED IN FEDERAL HOSPITAL INSURANCE TRUST FUND.—

(1) IN GENERAL.—After the payment of the costs of asset forfeiture has been made, and notwithstanding any other provision of law, the Secretary of the Treasury shall deposit into the Federal Hospital Insurance Trust Fund pursuant to section 1817(k)(2)(C) of the Social Security Act, as added by section 8101(b), an amount equal to the net amount realized from the forfeiture of property by reason of a Federal health care offense pursuant to section 982(a)(6) of title 18, United States Code.

(2) COSTS OF ASSET FORFEITURE.—For purposes of paragraph (1), the term "payment of the costs of asset forfeiture" means—

(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detention, or forfeited, or of any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for—

(i) contract services,

(ii) the employment of outside contractors to operate and manage properties or provide other specialized

services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(iii) reimbursement of any Federal, State, or local agency for any expenditures made to perform the functions described in this subparagraph;

(B) at the discretion of the Attorney General, the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Health Care Fraud and Abuse Control Account;

(C) the compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

(D) payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(E) the payment of State and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

SEC. 8143. INJUNCTIVE RELIEF RELATING TO FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Section 1345(a)(1) of title 18, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (A);

(2) by inserting "or" at the end of subparagraph (B); and

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

"(C) committing or about to commit a Federal health care offense (as defined in section 982(a)(6)(B) of this title);".

(b) FREEZING OF ASSETS.—Section 1345(a)(2) of title 18, United States Code, is amended by inserting "or a Federal health care offense (as defined in section 982(a)(6)(B))" after "title)".

SEC. 8144. FALSE STATEMENTS.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1033. False statements relating to health care matters

"(a) Whoever, in any matter involving a Federal health care program, knowingly and willfully—

"(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or

"(2) makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry,

shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) For purposes of this section, the term 'Federal health care program' has the same meaning given such term in section 1128B(f) of the Social Security Act.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, in amended by adding at the end the following:

"1033. False statements relating to health care matters.".

SEC. 8145. OBSTRUCTION OF CRIMINAL INVESTIGATIONS OF FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1518. Obstruction of criminal investigations of Federal health care offenses

"(a) Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a Federal health care offense to a criminal investigator shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) As used in this section the term 'Federal health care offense' has the same meaning given such term in section 982(a)(6)(B) of this title.

"(c) As used in this section the term 'criminal investigator' means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations for prosecutions for violations of health care offenses.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following:

"1518. Obstruction of Criminal Investigations of Federal Health Care Offenses.".

SEC. 8146. THEFT OR EMBEZZLEMENT.

(a) IN GENERAL.—Chapter 31 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 669. Theft or embezzlement in connection with health care

"(a) Whoever willfully embezzles, steals, or otherwise willfully and unlawfully converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property, or other assets of a Federal health care program, shall be fined under this title or imprisoned not more than 10 years, or both.

"(b) As used in this section the term 'Federal health care program' has the same meaning given such term in section 1128B(f) of the Social Security Act.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 31 of title 18, United States Code, is amended by adding at the end the following:

"669. Theft or Embezzlement in Connection with Health Care.".

SEC. 8147. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1956(c)(7) of title 18, United States Code, is amended by adding at the end the following new subparagraph:

"(F) Any act or activity constituting an offense involving a Federal health care offense as that term is defined in section 982(a)(6)(B) of this title.".

SEC. 8148. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.

(a) IN GENERAL.—Chapter 233 of title 18, United States Code, is amended by adding after section 3485 the following new section:

"§ 3486. Authorized investigative demand procedures

"(a)(1)(A) In any investigation relating to functions set forth in paragraph (2), the Attorney General or designee may issue in writing and cause to be served a subpoena compelling production of any records (including any books, papers, documents, electronic media, or other objects or tangible things), which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control.

"(B) A custodian of records may be required to give testimony concerning the production and authentication of such records.

"(C) The production of records may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place; except that such production shall not be required more than 500 miles distant from the place where the subpoena is served.

"(D) Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(E) A subpoena requiring the production of records shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

"(2) Investigative demands utilizing an administrative subpoena are authorized for any investigation with respect to any act or activity constituting or involving health care fraud, including a scheme or artifice—

"(A) to defraud any Federal health care program, in connection with the delivery of or payment for health care benefits, items, or services; or

"(B) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control or, any Federal health care program in connection with the delivery of or payment for health care benefits, items, or services.

"(b)(1) A subpoena issued under this section may be served by any person designated in the subpoena to serve it.

"(2) Service upon a natural person may be made by personal delivery of the subpoena to such person.

"(3) Service may be made upon a domestic or foreign association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

"(4) The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

"(c)(1) In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may invoke the aid of

any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which such person carries on business or may be found, to compel compliance with the subpoena.

"(2) The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony required under subsection (a)(1)(B).

"(3) Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(4) All process in any such case may be served in any judicial district in which such person may be found.

"(d) Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any customer or other person for such production or for nondisclosure of that production to the customer.

"(e)(1) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefore.

"(2) In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

"(3) Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

"(f) As used in this section the term 'Federal health care program' has the same meaning given such term in section 1128B(f) of the Social Security Act.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 223 of title 18, United States Code, is amended by inserting after the item relating to section 3405 the following new item:

"§ 3486. Authorized investigative demand procedures".

(c) CONFORMING AMENDMENT.—Section 1510(b)(3)(B) of title 18, United States Code, is amended by inserting "or a Department of Justice subpoena (issued under section 3486)," after "subpoena".

CHAPTER 6—STATE HEALTH CARE FRAUD CONTROL UNITS

SEC. 8151. STATE HEALTH CARE FRAUD CONTROL UNITS.

(a) EXTENSION OF CONCURRENT AUTHORITY TO INVESTIGATE AND PROSECUTE FRAUD IN OTHER FEDERAL PROGRAMS.—Paragraph (3) of section 2134(b), as added by section 7001 of this Act, is amended—

(1) by inserting "(A)" after "in connection with"; and

(2) by striking "plan." and inserting "plan; and (B) upon the approval of the relevant Federal agency and the chief executive officer of the State or such officer's designee, any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1128B(f)(1)).".

(b) EXTENSION OF AUTHORITY TO INVESTIGATE AND PROSECUTE PATIENT ABUSE IN NON-MEDIGRANT BOARD AND CARE FACILITIES.—Paragraph (4) of section 2134(b), as added by section 7001 of this Act, is amended to read as follows:

"(4)(A) The entity has—

"(i) procedures for reviewing complaints of abuse or neglect of patients in health care facilities which receive payments under the MediGrant plan funded under this title;

"(ii) at the option of the entity, procedures for reviewing complaints of abuse or neglect of patients residing in board and care facilities; and

"(iii) where appropriate, procedures for acting upon such complaints under the criminal laws of the State or for referring such complaints to other State agencies for action.

"(B) For purposes of this paragraph, the term 'board and care facility' means a residential setting which receives payment from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

"(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

"(ii) Personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.".

Subtitle C—Regulatory Relief

SEC. 8201. REPEAL OF PHYSICIAN OWNERSHIP REFERRAL PROHIBITIONS BASED ON COMPENSATION ARRANGEMENTS.

(a) IN GENERAL.—Section 1877(a)(2) (42 U.S.C. 1395nn(a)(2)) is amended by striking "is—" and all that follows through "equity," and inserting the following: "is (except as provided in subsection (c)) an ownership or investment interest in the entity through equity,".

(b) CONFORMING AMENDMENTS.—Section 1877 (42 U.S.C. 1395nn) is amended as follows:

(1) In subsection (b)—

(A) in the heading, by striking "TO BOTH OWNERSHIP AND COMPENSATION ARRANGEMENT PROHIBITIONS" and inserting "WHERE FINANCIAL RELATIONSHIP EXISTS"; and

(B) by redesignating paragraph (4) as paragraph (7).

(2) In subsection (c)—

(A) by amending the heading to read as follows: "EXCEPTION FOR OWNERSHIP OR INVESTMENT INTEREST IN PUBLICLY TRADED SECURITIES AND MUTUAL FUNDS"; and

(B) in the matter preceding paragraph (1), by striking "subsection (a)(2)(A)" and inserting "subsection (a)(2)".

(3) In subsection (d)—

(A) by striking the matter preceding paragraph (1);

(B) in paragraph (3), by striking "paragraph (1)" and inserting "paragraph (4)"; and

(C) by redesignating paragraphs (1), (2), and (3) as paragraphs (4), (5), and (6), and by transferring and inserting such paragraphs after paragraph (3) of subsection (b).

(4) By striking subsection (e).

(5) In subsection (f)(2)—

(A) in the matter preceding paragraph (1), by striking "ownership, investment, and compensation" and inserting "ownership and investment";

(B) in paragraph (2), by striking "subsection (a)(2)(A)" and all that follows through "subsection (a)(2)(B))," and inserting "subsection (a)(2),"; and

(C) in paragraph (2), by striking "or who have such a compensation relationship with the entity".

(6) In subsection (h)—

(A) by striking paragraphs (1), (2), and (3);

(B) in paragraph (4)(A), by striking clauses (iv) and (vi);

(C) in paragraph (4)(B), by striking "RULES.—" and all that follows through "(ii) FACULTY" and inserting "RULES FOR FACULTY"; and

(D) by adding at the end of paragraph (4) the following new subparagraph:

"(C) MEMBER OF A GROUP.—A physician is a 'member' of a group if the physician is an owner or a bona fide employee, or both, of the group.".

SEC. 8202. REVISION OF DESIGNATED HEALTH SERVICES SUBJECT TO OWNERSHIP REFERRAL PROHIBITION.

(a) IN GENERAL.—Section 1877(h)(6) (42 U.S.C. 1395nn(h)(6)) is amended by striking subparagraphs (B) through (K) and inserting the following:

"(B) Parenteral and enteral nutrients, equipment, and supplies.

"(C) Radiology services, including magnetic resonance imaging, computerized tomography, and ultrasound services.

"(D) Outpatient physical or occupational therapy services.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1877(b)(2) (42 U.S.C. 1395nn(b)(2)) is amended in the matter preceding subparagraph (A) by striking "services" and all that follows through "supplies)—" and inserting "services—".

(2) Section 1877(h)(5)(C) (42 U.S.C. 1395nn(h)(5)(C)) is amended—

(A) by striking ", a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy," and inserting "and a re-

quest by a radiologist for magnetic resonance imaging or for computerized tomography", and

(B) by striking "radiologist, or radiation oncologist" and inserting "or radiologist".

SEC. 8203. DELAY IN IMPLEMENTATION OF 1993 OWNERSHIP REFERRAL CHANGES UNTIL PROMULGATION OF REGULATIONS.

(a) IN GENERAL.—Section 13562(b) of OBRA–1993 (42 U.S.C. 1395nn note) is amended—

(1) in paragraph (1), by striking "paragraph (2)" and inserting "paragraphs (2) and (3)"; and

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

"(3) PROMULGATION OF REGULATIONS.—Notwithstanding paragraphs (1) and (2), the amendments made by this section shall not apply to any referrals made before the effective date of final regulations promulgated by the Secretary of Health and Human Services to carry out such amendments.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of OBRA–1993.

SEC. 8204. EXCEPTIONS TO OWNERSHIP REFERRAL PROHIBITIONS.

(a) REVISIONS TO EXCEPTION FOR IN-OFFICE ANCILLARY SERVICES.—

(1) REPEAL OF SITE-OF-SERVICE REQUIREMENT.—Section 1877 (42 U.S.C. 1395nn) is amended—

(A) by amending subparagraph (A) of subsection (b)(2) to read as follows:

"(A) that are furnished personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are under the general supervision of the physician or of another physician in the group practice, and", and

(B) by adding at the end of subsection (h) the following new paragraph:

"(7) GENERAL SUPERVISION.—An individual is considered to be under the 'general supervision' of a physician if the physician (or group practice of which the physician is a member) is legally responsible for the services performed by the individual and for ensuring that the individual meets licensure and certification requirements, if any, applicable under other provisions of law, regardless of whether or not the physician is physically present when the individual furnishes an item or service.".

(2) CLARIFICATION OF TREATMENT OF PHYSICIAN OWNERS OF GROUP PRACTICE.—Section 1877(b)(2)(B) (42 U.S.C. 1395nn(b)(2)(B)) is amended by striking "physician or such group practice" and inserting "physician, such group practice, or the physician owners of such group practice".

(3) CONFORMING AMENDMENT.—Section 1877(b)(2) (42 U.S.C. 1395nn(b)(2)) is amended by amending the heading to read as follows: "ANCILLARY SERVICES FURNISHED PERSONALLY OR THROUGH GROUP PRACTICE.—".

(b) CLARIFICATION OF EXCEPTION FOR SERVICES FURNISHED IN A RURAL AREA.—Paragraph (5) of section 1877(b) (42 U.S.C.

1395nn(b)), as transferred by section 8201(b)(3)(C), is amended by striking "substantially all" and inserting "not less than 75 percent".

(c) REVISION OF EXCEPTION FOR CERTAIN MANAGED CARE ARRANGEMENTS.—Section 1877(b)(3) (42 U.S.C. 1395nn(b)(3)) is amended—

(1) in the heading by inserting "MANAGED CARE ARRANGEMENTS" after "PREPAID PLANS";

(2) in the matter preceding subparagraph (A), by striking "organization—" and inserting "organization, directly or through contractual arrangements with other entities, to individuals enrolled with the organization—";

(3) in subparagraph (A), by inserting "or part C" after "section 1876";

(4) by striking "or" at the end of subparagraph (C);

(5) by striking the period at the end of subparagraph (D) and inserting a comma; and

(6) by adding at the end the following new subparagraphs:

"(E) with a contract with a State to provide services under the State plan under title XIX (in accordance with section 1903(m)) or a State MediGrant plan under title XXI; or

"(F) which is a MedicarePlus organization under part C or which provides or arranges for the provision of health care items or services pursuant to a written agreement between the organization and an individual or entity if the written agreement places the individual or entity at substantial financial risk for the cost or utilization of the items or services which the individual or entity is obligated to provide, whether through a withhold, capitation, incentive pool, per diem payment, or any other similar risk arrangement which places the individual or entity at substantial financial risk.".

(d) NEW EXCEPTION FOR SHARED FACILITY SERVICES.—

(1) IN GENERAL.—Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by section 8201(b)(3)(C), is amended—

(A) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8); and

(B) by inserting after paragraph (3) the following new paragraph:

"(4) SHARED FACILITY SERVICES.—In the case of a designated health service consisting of a shared facility service of a shared facility—

"(A) that is furnished—

"(i) personally by the referring physician who is a shared facility physician or personally by an individual directly employed or under the general supervision of such a physician,

"(ii) by a shared facility in a building in which the referring physician furnishes substantially all of the services of the physician that are unrelated to the furnishing of shared facility services, and

"(iii) to a patient of a shared facility physician; and

"(B) that is billed by the referring physician or a group practice of which the physician is a member.".

(2) DEFINITIONS.—Section 1877(h) (42 U.S.C. 1395nn(h)), as amended by section 8201(b)(6), is amended by inserting before paragraph (4) the following new paragraph:

"(1) SHARED FACILITY RELATED DEFINITIONS.—

"(A) SHARED FACILITY SERVICE.—The term 'shared facility service' means, with respect to a shared facility, a designated health service furnished by the facility to patients of shared facility physicians.

"(B) SHARED FACILITY.—The term 'shared facility' means an entity that furnishes shared facility services under a shared facility arrangement.

"(C) SHARED FACILITY PHYSICIAN.—The term 'shared facility physician' means, with respect to a shared facility, a physician (or a group practice of which the physician is a member) who has a financial relationship under a shared facility arrangement with the facility.

"(D) SHARED FACILITY ARRANGEMENT.—The term 'shared facility arrangement' means, with respect to the provision of shared facility services in a building, a financial arrangement—

"(i) which is only between physicians who are providing services (unrelated to shared facility services) in the same building,

"(ii) in which the overhead expenses of the facility are shared, in accordance with methods previously determined by the physicians in the arrangement, among the physicians in the arrangement, and

"(iii) which, in the case of a corporation, is wholly owned and controlled by shared facility physicians.".

(e) NEW EXCEPTION FOR SERVICES FURNISHED IN COMMUNITIES WITH NO ALTERNATIVE PROVIDERS.—Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by section 8201(b)(3)(C) and subsection (d)(1), is amended—

(1) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9); and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) NO ALTERNATIVE PROVIDERS IN AREA.—In the case of a designated health service furnished in any area with respect to which the Secretary determines that individuals residing in the area do not have reasonable access to such a designated health service for which subsection (a)(1) does not apply.".

(f) NEW EXCEPTION FOR SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS.—Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by section 8201(b)(3)(C), subsection (d)(1), and subsection (e)(1), is amended—

(1) by redesignating paragraphs (6) through (9) as paragraphs (7) through (10); and

(2) by inserting after paragraph (5) the following new paragraph:

"(6) SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS.—In the case of a designated health service furnished in

an ambulatory surgical center described in section 1832(a)(2)(F)(i).".

(g) NEW EXCEPTION FOR SERVICES FURNISHED IN RENAL DIALYSIS FACILITIES.—Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by section 8201(b)(3)(C), subsection (d)(1), subsection (e)(1), and subsection (f), is amended—

(1) by redesignating paragraphs (7) through (10) as paragraphs (8) through (11); and

(2) by inserting after paragraph (6) the following new paragraph:

"(7) SERVICES FURNISHED IN RENAL DIALYSIS FACILITIES.—In the case of a designated health service furnished in a renal dialysis facility under section 1881.".

(h) NEW EXCEPTION FOR SERVICES FURNISHED IN A HOSPICE.—Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by section 8201(b)(3)(C), subsection (d)(1), subsection (e)(1), subsection (f), and subsection (g), is amended—

(1) by redesignating paragraphs (8) through (11) as paragraphs (9) through (12); and

(2) by inserting after paragraph (7) the following new paragraph:

"(8) SERVICES FURNISHED BY A HOSPICE PROGRAM.—In the case of a designated health service furnished by a hospice program under section 1861(dd)(2).".

(i) NEW EXCEPTION FOR SERVICES FURNISHED IN A COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY.—Section 1877(b) (42 U.S.C. 1395nn(b)), as amended by section 8201(b)(3)(C), subsection (d)(1), subsection (e)(1), subsection (f), subsection (g), and subsection (h), is amended—

(1) by redesignating paragraphs (9) through (12) as paragraphs (10) through (13); and

(2) by inserting after paragraph (8) the following new paragraph:

"(9) SERVICES FURNISHED IN A COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY.—In the case of a designated health service furnished in a comprehensive outpatient rehabilitation facility (as defined in section 1861(cc)(2)).".

(j) DEFINITION OF REFERRAL.—Section 1877(h)(5)(A) (42 U.S.C. 1395nn(h)(5)(A)) is amended—

(1) by striking "an item or service" and inserting "a designated health service", and

(2) by striking "the item or service" and inserting "the designated health service".

SEC. 8205. EFFECTIVE DATE.

Except as provided in section 8203(b), the amendments made by this subtitle shall apply to referrals made on or after the date of the enactment of this Act, regardless of whether or not regulations are promulgated to carry out such amendments.

Subtitle D—Modification in Payment Policies Regarding Graduate Medical Education

SEC. 8301. INDIRECT MEDICAL EDUCATION PAYMENTS.

(a) MULTIYEAR TRANSITION REGARDING PERCENTAGES; 6.7 FOR 1996 TO 5.0 FOR 2001 AND AFTERWARDS.—Section 1886(D)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)(ii)) us amended to read as follows:

"(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor is equal to c × (((1+r) to the nth power)−1), where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds and 'n' equal .405. For discharges occurring on or after—

"(I) May 1, 1986, and before October 1, 1995, 'c' is equal to 1.89;

"(II) October 1, 1995, and before October 1, 1996, 'c' is equal to 1.654;

"(III) October 1, 1996, and before October 1, 1998, 'c' is equal to 1.481;

"(IV) October 1, 1998, and before October 1, 1999, 'c' is equal to 1.383;

"(V) October 1, 1999, and before October 1, 2000, 'c' is equal to 1.309; and

"(VI) October 1, 2000, 'c' is equal to 1.235.".

(b) NO RESTANDARDIZATION OF PAYMENT AMOUNTS REQUIRED.—Section 1886(d)(2)(C)(i) (42 U.S.C. 1395ww(d)(2)(C)(i)) is amended by striking "of 1985" and inserting "of 1985, but not taking into account the amendments made by section 8301(a) of Medicate Preservation Act of 1995".

SEC. 8302. DIRECT GRADUATE MEDICAL EDUCATION.

(a) WEIGHTING FACTORS FOR RESIDENTS.—

(1) IN GENERAL.—Section 1886(h)(4)(C)(iv) (42 U.S.C. 1395ww(h)(4)(C)(iv)) is amended by striking "50" and inserting "0.25".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to cost reporting periods beginning on or after October 1, 1997.

(b) LIMITATION ON AGGREGATE NUMBER OF FULL-TIME RESIDENTS.—

Section 1886(h)(4) (42 U.S.C. 1395ww(h)(4)) is amended by adding at the end the following new subparagraph:

"(F) ADJUSTMENTS FOR CERTAIN FISCAL YEARS IN PAYMENTS FOR PROGRAMS IN ALLOPATHIC AND OSTEOPATHIC MEDICINE.—

"(i) IN GENERAL.—With respect to a cost reporting period, the Secretary shall in accordance with clause (ii) adjust the payments for approved medical residency training programs in the fields of allopathic medicine and osteopathic medicine if, in the fiscal year in which such cost reporting period begins, the number of full-time-equivalent residents determined under this paragraph with respect to all such programs exceeds the number of full-time-equiva-

lent residents determined with respect to all such programs as of August 1, 1995.

"(ii) ADJUSTMENT DESCRIBED.—Adjustments under clause (i) shall be made with respect to cost reporting periods such that the total amount of payments under this subsection for the fiscal year involved does not exceed the amount that would have been paid under this subsection for such year if the number of full-time-equivalent residents determined under clause (i) for the year had not exceeded the number of full-time-equivalent residents with respect to all such programs as of August 1, 1995.

"(iii) HOLD HARMLESS.—The Secretary may provide that approved medical residency training programs that reduced or did not expand the number of full-time-equivalent residents determined under this paragraph for a cost reporting period shall not be subject to the adjustment described in clause (i).

"(iv) EFFECTIVE DATE.—The adjustment described in clause (i) shall apply with respect to cost reporting periods beginning on or after October 1, 1995, and on or before September 30, 2002.".

Subtitle E—Provisions Relating to Part A

CHAPTER 1—GENERAL PROVISIONS RELATING TO PART A

SEC. 8401. PPS HOSPITAL PAYMENT UPDATE.

Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended by striking subclauses (XI), (XII), and (XIII) and inserting the following new subclauses:

"(XI) for fiscal year 1996 for hospitals in all areas, the market basket percentage increase minus 2.5 percentage points,

"(XII) for fiscal years 1997 through 2002 for hospitals in all areas, the market basket percentage increase minus 2.0 percentage points, and

"(XIII) for fiscal year 2003 and each subsequent fiscal year for hospitals in all areas, the market basket percentage increase.".

SEC. 8402. PPS-EXEMPT HOSPITAL PAYMENTS.

(a) UPDATE.—

(1) IN GENERAL.—Section 1886(b)(3)(B)(ii) (42 U.S.C. 1395ww(b)(3)(B)(ii)) is amended—

(A) in subclause (V)—

(i) by striking "1997" and inserting "1995", and

(ii) by striking "and" at the end,

(B) by redesignating subclause (VI) as subclause (VII); and

(C) by inserting after subclause (V), the following subclause:

"(VI) except as provided in clause (vi), for fiscal years 1996 through 2002, the market basket percentage increase minus the applicable reduction (as defined in clause (vii)(II)); and".

(2) SPECIAL RULES FOR CERTAIN HOSPITALS.—Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)(B))) is amended by adding at the end the following new clause:

"(vi) For purposes of clause (ii)(VI), the 'applicable percentage increase' for a hospital—

"(I) for a fiscal year for which the hospital's update adjustment percentage (as defined in clause (vii)(I)) is at least 10 percent, is the market basket percentage increase, and

"(II) for which 150 percent of the hospital's allowable operating costs of inpatient hospital services recognized under this title for the most recent cost reporting period for which information is available is less than the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, is 0 percent.".

(3) DEFINITIONS.—Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)(B)), as amended by paragraph (2), is amended by adding at the end the following new clause:

"(vii) For purposes of clauses (ii)(VI) and (vi)—

"(I) a hospital's 'update adjustment percentage' for a fiscal year is the percentage by which the hospital's allowable operating costs of inpatient hospital services recognized under this title for the most recent cost reporting period for which information is available exceeds the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, and

"(II) the 'applicable reduction' with respect to a hospital for a fiscal year is 2.5 percentage points, reduced by 0.25 percentage point for each percentage point (if any) the hospital's update adjustment percentage for the fiscal year is less than 10 percentage points.".

(3) EFFECT OF PAYMENT REDUCTION ON EXCEPTIONS AND ADJUSTMENTS.—Section 1886(b)(4)(A)(ii) (42 U.S.C. 1395ww(b)(4)(A)(ii)) is amended by striking "paragraph (3)(B)(ii)(V)" and inserting "subclause (V) or (VI) of paragraph (3)(B)(ii)".

(b) TARGET AMOUNTS FOR REHABILITATION HOSPITALS AND LONG-TERM CARE HOSPITALS.—Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking "and (E)" and inserting "(E), (F), and (G)"; and

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

"(F) In the case of a rehabilitation hospital (or unit thereof) (as described in clause (ii) of subsection (d)(1)(B)), for cost reporting periods beginning on or after October 1, 1995,—

"(i) in the case of a hospital which first receives payments under this section before October 1, 1995, the target amount determined under subparagraph (A) for such hospital or unit for a cost reporting period beginning during a fiscal year shall not be less than 50 percent of the national mean of the target amounts determined under this paragraph for all such hospitals for cost reporting periods beginning during such fiscal year (determined without regard to this subparagraph); and

"(ii) in the case of a hospital which first receives payments under this section on or after October 1, 1995, such target

amount may not be greater than 130 percent of the national mean of the target amounts for such hospitals (and units thereof) for cost reporting periods beginning during fiscal year 1991.

“(G) In the case of a hospital which has an average inpatient length of stay of greater than 25 days (as described in clause (iv) of subsection (d)(1)(B)), for cost reporting periods beginning on or after October 1, 1995—

“(i) in the case of a hospital which first receives payments under this section as a hospital that is not a subsection (d) hospital or a subsection (d) Puerto Rico hospital before October 1, 1995, the target amount determined under subparagraph (A) for such hospital for a cost reporting period beginning during a fiscal year shall not be less than 50 percent of the national mean of the target amounts determined under such subparagraph for all such hospitals for cost reporting periods beginning during such fiscal year (determined without regard to this subparagraph); and

“(ii) in the case of any other hospital which first receives payment under this section as a hospital described in clause (i) on or after October 1, 1995, such target amount may not be greater than 130 percent (or, if the Secretary determines it is appropriate, such alternative percentage based on case-mix and DRG category) of such national mean of the target amounts for such hospitals for cost reporting periods beginning during fiscal year 1991.”.

(c) REBASING FOR CERTAIN LONG-TERM CARE HOSPITALS.—

(1) IN GENERAL.—Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)), as amended by subsection (b), is amended—

(A) in subparagraph (A) in the matter preceding clause (i), by striking “and (G)” and inserting “(G), and (H)”;

(B) in subparagraph (B)(ii), by striking “(A) and (E)” and inserting “(A), (E), and (G)”; and

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

“(H)(i) In the case of a qualified long-term care hospital (as defined in clause (ii)), the term ‘target amount’ means—

“(I) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital, the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for the hospital for the 12-month cost reporting period beginning during fiscal year 1994; or

“(II) with respect to a later cost reporting period, the target amount for the preceding cost reporting period, increased by the applicable percentage increase under subparagraph (B)(ii) for that later cost reporting period.

“(ii) In clause (i), a ‘qualified long-term care hospital’ means, with respect to a cost reporting period, a hospital described in clause (iv) of subsection (d)(1)(B) during fiscal year 1995 for which the hospital’s allowable operating costs of inpatient hospital services recognized under this title for each of the two most recent previous 12-month cost reporting periods exceeded 115 percent of the hospital’s target amount determined under this paragraph for such cost reporting periods, if the hospital has a disproportionate patient per-

centage during such cost reporting period (as determined by the Secretary under subsection (d)(5)(F)(vi) as if the hospital were a subsection (d) hospital) of at least 70 percent.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges occurring during cost reporting periods beginning on or after October 1, 1995.

(d) TREATMENT OF CERTAIN LONG-TERM CARE HOSPITALS LOCATED WITHIN OTHER HOSPITALS.—

(1) IN GENERAL.—Section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) is amended in the matter following clause (v) by striking the period and inserting the following: ", or a hospital classified by the Secretary as a long-term care hospital on or before September 30, 1995, and located in the same building as, or on the same campus as, another hospital.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges occurring on or after October 1, 1995.

(e) CAPITAL PAYMENTS FOR PPS-EXEMPT HOSPITALS.—Section 1886(g) (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:

"(4) In determining the amount of the payments that may be made under this title with respect to all the capital-related costs of inpatient hospital services furnished during fiscal years 1996 through 2002 of a hospital which is not a subsection (d) hospital or a subsection (d) Puerto Rico hospital, the Secretary shall reduce the amounts of such payments otherwise determined under this title by 10 percent.".

SEC. 8403. REDUCTIONS IN DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS.

(a) IN GENERAL.—Section 1886(d)(5)(F) (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(1) in clause (ii), by striking "The amount" and inserting "Subject to clause (ix), the amount"; and

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

"(ix) In the case of discharges occurring on or after October 1, 1995, the additional payment amount otherwise determined under clause (ii) shall be reduced as follows:

"(I) For discharges occurring on or after October 1, 1995, and on or before September 30, 1996, by 5 percent.

"(II) For discharges occurring on or after October 1, 1996, and on or before September 30, 1997, by 10 percent.

"(III) For discharges occurring on or after October 1, 1997, and on or before September 30, 1998, by 17.5 percent.

"(IV) For discharges occurring on or after October 1, 1998, and on or before September 30, 1999, by 25 percent.

"(V) For discharges occurring on or after October 1, 1999, and on or before September 30, 2002, by 30 percent.".

(b) CONFORMING AMENDMENT RELATING TO DETERMINATION OF STANDARDIZED AMOUNTS.—Section 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)) is amended by striking the period at the end and inserting the following: ", and the Secretary shall not take into account any reductions in the amount of such additional payments resulting from the amendments made by section 8403(a) of the Medicare Preservation Act of 1995.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to discharges occurring on or after October 1, 1995.

SEC. 8404. CAPITAL PAYMENTS FOR PPS HOSPITALS.

(a) REDUCTION IN PAYMENTS.—

(1) CONTINUATION OF CURRENT REDUCTIONS.—Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)(A)) is amended in the second sentence—

(A) by striking "through 1995" and inserting "through 2002"; and

(B) by inserting after "10 percent reduction" the following: "(or a 15 percent reduction in the case of payments during fiscal years 1996 through 2002)".

(2) REDUCTION IN BASE PAYMENT RATES.—Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)(A)) is amended by adding at the end the following new sentence: "In addition to the reduction described in the preceding sentence, for discharges occurring after September 30, 1995, the Secretary shall reduce by 7.47 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on the date of the enactment of the Medicare Preservation Act of 1995) and shall reduce by 8.27 percent the unadjusted hospital-specific rate (as described in 42 CFR 412.328(e)(1), as in effect on such date of enactment).".

(b) HOSPITAL-SPECIFIC ADJUSTMENT FOR CAPITAL-RELATED TAX COSTS.—Section 1886(g)(1) (42 U.S.C. 1395ww(g)(1)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D), and

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

"(C)(i) For discharges occurring after September 30, 1995, such system shall provide for an adjustment in an amount equal to the amount determined under clause (iv) for capital-related tax costs for each hospital that is eligible for such adjustment.

"(ii) Subject to clause (iii), a hospital is eligible for an adjustment under this subparagraph, with respect to discharges occurring in a fiscal year, if the hospital—

"(I) is a hospital that may otherwise receive payments under this subsection,

"(II) is not a public hospital, and

"(III) incurs capital-related tax costs for the fiscal year.

"(iii)(I) In the case of a hospital that first incurs capital-related tax costs in a fiscal year after fiscal year 1992 because of a change from nonproprietary to proprietary status or because the hospital commenced operation after such fiscal year, the first fiscal year for which the hospital shall be eligible for such adjustment is the second full fiscal year following the fiscal year in which the hospital first incurs such costs.

"(II) In the case of a hospital that first incurs capital-related tax costs in a fiscal year after fiscal year 1992 because of a change in State or local tax laws, the first fiscal

year for which the hospital shall be eligible for such adjustment is the fourth full fiscal year following the fiscal year in which the hospital first incurs such costs.

"(iv) The per discharge adjustment under this clause shall be equal to the hospital-specific capital-related tax costs per discharge of a hospital for fiscal year 1992 (or, in the case of a hospital that first incurs capital-related tax costs for a fiscal year after fiscal year 1992, for the first full fiscal year for which such costs are incurred), updated to the fiscal year to which the adjustment applies. Such per discharge adjustment shall be added to the Federal capital rate, after such rate has been adjusted as described in 42 CFR 412.312 (as in effect on the date of the enactment of the Medicare Preservation Act of 1995), and before such rate is multiplied by the applicable Federal rate percentage.

"(v) For purposes of this subparagraph, capital-related tax costs include—

"(I) the costs of taxes on land and depreciable assets owned by a hospital and used for patient care,

"(II) payments in lieu of such taxes (made by hospitals that are exempt from taxation), and

"(III) the costs of taxes paid by a hospital as lessee of land, buildings, or fixed equipment from a lessor that is unrelated to the hospital under the terms of a lease that requires the lessee to pay all expenses (including mortgage, interest, and amortization) and leaves the lessor with an amount free of all claims (sometimes referred to as a 'net net net' or 'triple net' lease).

In determining the adjustment required under clause (i), the Secretary shall not take into account any capital-related tax costs of a hospital to the extent that such costs are based on tax rates and assessments that exceed those for similar commercial properties.

"(vi) The system shall provide that the Federal capital rate for any fiscal year after September 30, 1995, shall be reduced by a percentage sufficient to ensure that the adjustments required to be paid under clause (i) for a fiscal year neither increase nor decrease the total amount that would have been paid under this system but for the payment of such adjustments for such fiscal year.".

(d) REVISION OF EXCEPTIONS PROCESS UNDER PROSPECTIVE PAYMENT SYSTEM FOR CERTAIN PROJECTS.—

(1) IN GENERAL.—Section 1886(g)(1) (42 U.S.C. 1395ww(g)(1)), as amended by subsection (c), is amended—

(A) by redesignating subparagraph (D) as subparagraph (E), and

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

"(D) The exceptions under the system provided by the Secretary under subparagraph (B)(iii) shall include the provision of exception payments under the special exceptions process provided under 42 CFR 412.348(g) (as in effect on September 1, 1995), except that the Secretary shall revise such process as follows:

"(i) A hospital with at least 100 beds which is located in an urban area shall be eligible under such process without regard to its disproportionate patient percentage under subsection (d)(5)(F) or whether it qualifies for additional payment amounts under such subsection.

"(ii) The minimum payment level for qualifying hospitals shall be 85 percent.

"(iii) A hospital shall be considered to meet the requirement that it completes the project involved no later than the end of the hospital's last cost reporting period beginning after October 1, 2001, if—

"(I) the hospital has obtained a certificate of need for the project approved by the State or a local planning authority by September 1, 1995, and

"(II) by September 1, 1995, the hospital has expended on the project at least $750,000 or 10 percent of the estimated cost of the project.

"(iv) Offsetting amounts, as described in 42 CFR 412.348(g)(8)(ii), shall apply except that subparagraph (B) of such section shall be revised to require that the additional payment that would otherwise be payable for the cost reporting period shall be reduced by the amount (if any) by which the hospital's current year medicare capital payments (excluding, if applicable, 75 percent of the hospital's capital-related disproportionate share payments) exceeds its medicare capital costs for such year.".

(2) LIMIT TO ADDITIONAL PAYMENTS.—The amendment made by paragraph (1) shall not result in aggregate additional payments under the special exception process described in section 1886(b)(1)(D) for fiscal years 1996 through 2000 in excess of an amount equal to the sum of $50,000,000 per year more than would have been paid in such fiscal years if such amendment had not been enacted.

(3) CONFORMING AMENDMENT.—Section 1886(g)(1)(B)(iii) (42 U.S.C. 1395ww(g)(1)(B)(iii)) is amended by striking "may provide" and inserting "shall provide (in accordance with subparagraph (D)".

SEC. 8405. REDUCTION IN PAYMENTS TO HOSPITALS FOR ENROLLEES' BAD DEBTS.

(a) IN GENERAL.—Section 1861(v)(1) (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

"(T)(i) In determining such reasonable costs for hospitals, the amount of bad debts otherwise treated as allowable costs which are attributable to the deductibles and coinsurance amounts under this title shall be reduced by—

"(I) 75 percent for cost reporting periods beginning during fiscal year 1996,

"(II) 60 percent for cost reporting periods beginning during fiscal year 1997, and

"(III) 50 percent for subsequent cost reporting periods.

"(ii) Clause (i) shall not apply with respect to bad debt of a hospital described in section 1886(d)(1)(B)(iv) if the debt is attributable to uncollectable deductible and coinsurance payments owed by indi-

viduals enrolled in a State plan under title XIX or under the MediGrant program under title XXI.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to hospital cost reporting periods beginning on or after October 1, 1995.

SEC. 8406. INCREASE IN UPDATE FOR CERTAIN HOSPITALS WITH A HIGH PROPORTION OF MEDICARE PATIENTS.

Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)), as amended by subsections (b) and (c)(1) of section 8402, is amended by adding at the end the following new subparagraph:

''(I)(i) For purposes of subsection (d), in the case of a medicare-dependent hospital described in clause (ii), the applicable percentage increase otherwise determined under subparagraph (B)(i) shall be increased by—

''(I) 0.5 percentage points for discharges occurring during cost reporting periods beginning during fiscal year 1996, and

''(II) 0.3 percentage points for discharges occurring during cost reporting periods beginning during fiscal year 1997.

''(ii) A hospital described in this clause with respect to a cost reporting period is a subsection (d) hospital meeting the following requirements:

''(I) Not less than 60 percent of the hospital's inpatient days during the most recent cost reporting period for which data is available were attributable to inpatients entitled to benefits under part A.

''(II) The hospital does not receive any additional payment amount under subsection (d)(5)(F) (relating to payments for hospitals serving a disproportionate number of low-income patients) with respect to discharges occurring during the fiscal year.

''(III) The hospital does not receive any additional payment amount under subsection (d)(5)(B) (relating to payment for the indirect costs of medical education) or subsection (h) (relating to payment for direct medical education costs).

''(IV) In the case of a hospital located in a rural area, the hospital has more than 100 beds.''.

CHAPTER 2—PAYMENTS TO SKILLED NURSING FACILITIES

Subchapter A—Prospective Payment System

SEC. 8410. PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITIES.

Title XVIII (42 U.S.C. 1395 et seq.) is amended by adding the following new section after section 1888:

''PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITIES

''SEC. 1889. (a) ESTABLISHMENT OF SYSTEM.—Notwithstanding any other provision of this title, the Secretary shall establish a prospective payment system under which fixed payments for episodes of care shall be made, instead of payments determined under section 1861(v), section 1888, or section 1888A, to skilled nursing facilities for all extended care services furnished during the benefit period established under section 1812(a)(2). Such payments shall constitute

payment for capital costs and all routine and non-routine service costs covered under this title that are furnished to individuals who are inpatients of skilled nursing facilities during such benefit period, except for physicians' services. The payment amounts shall vary depending on case-mix, patient acuity, and such other factors as the Secretary determines are appropriate. The prospective payment system shall apply for cost reporting periods (or portions of cost reporting periods) beginning on or after October 1, 1997.

"(b) 90 PERCENT OF LEVELS OTHERWISE IN EFFECT.—The Secretary shall establish the prospective payment amounts under subsection (a) at levels such that, in the Secretary's estimation, the amount of total payments under this title shall not exceed 90 percent of the amount of payments that would have been made under this title for all routine and non-routine services and capital expenditures if this section had not been enacted.

"(c) ADJUSTMENT IN RATES TO TAKE INTO ACCOUNT BENEFICIARY COST-SHARING.—The Secretary shall reduce the prospective payment rates established under this section to take into account the beneficiary coinsurance amount required under section 1813(a)(3).".

Subchapter B—Interim Payment System

SEC. 8411. PAYMENTS FOR ROUTINE SERVICE COSTS.

(a) CLARIFICATION OF DEFINITION OF ROUTINE SERVICE COSTS.—Section 1888 (42 U.S.C. 1395yy) is amended by adding at the end the following new subsection:

"(e) For purposes of this section, the 'routine service costs' of a skilled nursing facility are all costs which are attributable to nursing services, room and board, administrative costs, other overhead costs, and all other ancillary services (including supplies and equipment), excluding costs attributable to covered non-routine services subject to payment amounts under section 1888A.".

(b) CONFORMING AMENDMENT.—Section 1888 (42 U.S.C. 1395yy) is amended in the heading by inserting "AND CERTAIN ANCILLARY" after "SERVICE".

SEC. 8412. COST-EFFECTIVE MANAGEMENT OF COVERED NON-ROUTINE SERVICES.

(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et seq.) is amended by inserting after section 1888 the following new section:

"COST-EFFECTIVE MANAGEMENT OF COVERED NON-ROUTINE SERVICES OF SKILLED NURSING FACILITIES

"SEC. 1888A. (a) DEFINITIONS.—For purposes of this section:

"(1) COVERED NON-ROUTINE SERVICES.—The term 'covered non-routine services' means post-hospital extended care services consisting of any of the following:

"(A) Physical or occupational therapy or speech-language pathology services, or respiratory therapy, including supplies and support services directly related to such services and therapy.

"(B) Prescription drugs.

"(C) Complex medical equipment.

"(D) Intravenous therapy and solutions (including enteral and parenteral nutrients, supplies, and equipment).

"(E) Radiation therapy.

"(F) Diagnostic services, including laboratory, radiology (including computerized tomography services and imaging services), and pulmonary services.

"(2) SNF MARKET BASKET PERCENTAGE INCREASE.—The term 'SNF market basket percentage increase' for a fiscal year means a percentage equal to input price changes in routine service costs for the year under section 1888(a).

"(3) STAY.—The term 'stay' means, with respect to an individual who is a resident of a skilled nursing facility, a period of continuous days during which the facility provides extended care services for which payment may be made under this title for the individual during the individual's spell of illness.

"(b) NEW PAYMENT METHOD FOR COVERED NON-ROUTINE SERVICES BEGINNING IN FISCAL YEAR 1996.—

"(1) IN GENERAL.—The payment method established under this section shall apply with respect to covered non-routine services furnished during cost reporting periods (or portions of cost reporting periods) beginning on or after October 1, 1995.

"(2) INTERIM PAYMENTS.—Subject to subsection (c), a skilled nursing facility shall receive interim payments under this title for covered non-routine services furnished to an individual during cost reporting periods (or portions of cost reporting periods) described in paragraph (1) in an amount equal to the reasonable cost of providing such services in accordance with section 1861(v). The Secretary may adjust such payments if the Secretary determines (on the basis of such estimated information as the Secretary considers appropriate) that payments to the facility under this paragraph for a cost reporting period would substantially exceed the cost reporting period amount determined under subsection (c)(2).

"(3) RESPONSIBILITY OF SKILLED NURSING FACILITY TO MANAGE BILLINGS.—

"(A) CLARIFICATION RELATING TO PART A BILLING.—In the case of a covered non-routine service furnished to an individual who (at the time the service is furnished) is a resident of a skilled nursing facility who is entitled to coverage under section 1812(a)(2) for such service, the skilled nursing facility shall submit a claim for payment under this title for such service under part A (without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise).

"(B) PART B BILLING.—In the case of a covered non-routine service other than a portable X-ray or portable electrocardiogram treated as a physician's service for purposes of section 1848(j)(3)) furnished to an individual who (at the time the service is furnished) is a resident of a skilled nursing facility who is not entitled to coverage under section 1812(a)(2) for such service but is entitled to coverage under part B for such service, the skilled nursing facility shall submit a claim for payment under this title for such service under part B (without regard to whether or not the item or

service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise). This subparagraph shall not apply to physician's services furnished by a physician (as defined in section 1861(r)(1)) to a resident of a skilled nursing facility if such services are not covered non-routine services (as defined in section 1888A(a)(1)) or services for which routine service costs (as defined in section 1888(e)) are determined.

"(C) MAINTAINING RECORDS ON SERVICES FURNISHED TO RESIDENTS.—Each skilled nursing facility receiving payments for extended care services under this title shall document on the facility's cost report all covered non-routine services furnished to all residents of the facility to whom the facility provided extended care services for which payment was made under part A or B (including a portable X-ray or portable electrocardiogram treated as a physician's service for purposes of section 1848(j)(3)) during a fiscal year (beginning with fiscal year 1996) (without regard to whether or not the services were furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise).

"(c) NO PAYMENT IN EXCESS OF PRODUCT OF PER STAY AMOUNT AND NUMBER OF STAYS.—

"(1) IN GENERAL.—If a skilled nursing facility has received aggregate payments under subsection (b) for covered non-routine services during a cost reporting period beginning during a fiscal year in excess of an amount equal to the cost reporting period amount determined under paragraph (2), the Secretary shall reduce the payments made to the facility with respect to such services for cost reporting periods beginning during the following fiscal year in an amount equal to such excess. The Secretary shall reduce payments under this subparagraph at such times and in such manner during a fiscal year as the Secretary finds necessary to meet the requirement of this subparagraph.

"(2) COST REPORTING PERIOD AMOUNT.—The cost reporting period amount determined under this subparagraph is an amount equal to the product of—

"(A) the per stay amount applicable to the facility under subsection (d) for the period; and

"(B) the number of stays beginning during the period for which payment was made to the facility for such services.

"(3) PROSPECTIVE REDUCTION IN PAYMENTS.—In addition to the process for reducing payments described in paragraph (1), the Secretary may reduce payments made to a facility under this section during a cost reporting period if the Secretary determines (on the basis of such estimated information as the Secretary considers appropriate) that payments to the facility under this section for the period will substantially exceed the cost reporting period amount for the period determined under this paragraph.

"(d) DETERMINATION OF FACILITY PER STAY AMOUNT.—

"(1) AMOUNT FOR FISCAL YEAR 1996.—

"(A) IN GENERAL.—

"(i) ESTABLISHMENT.—Except as provided in subparagraph (B) and clause (ii), the Secretary shall establish a per stay amount for each nursing facility for the 12-month cost reporting period beginning during fiscal year 1996 that is the facility-specific stay amount for the facility (as determined under subsection (e)) for the last 12-month cost reporting period ending on or before December 31, 1994, increased (in a compounded manner) by the SNF market basket percentage increase (as defined in subsection (a)(2)) for each fiscal year through fiscal year 1996.

"(ii) ADJUSTMENT IF IMPLEMENTATION DELAYED.—If the amount under clause (i) is not established prior to the cost reporting period described in clause (i), the Secretary shall adjust such amount for stays after such amount is established in such a manner so as to recover any amounts in excess of the amounts which would have been paid for stays before such date if the amount had been in effect for such stays.

"(B) FACILITIES NOT HAVING 1994 COST REPORTING PERIOD.—In the case of a skilled nursing facility for which payments were not made under this title for covered non-routine services for the last 12-month cost reporting period ending on or before December 31, 1994, the per stay amount for the 12-month cost reporting period beginning during fiscal year 1996 shall be the average of all per stay amounts determined under subparagraph (A).

"(2) AMOUNT FOR FISCAL YEAR 1997 AND SUBSEQUENT FISCAL YEARS.—The per stay amount for a skilled nursing facility for a 12-month cost reporting period beginning during a fiscal year after 1996 is equal to the per stay amount established under this subsection for the 12-month cost reporting period beginning during the preceding fiscal year (without regard to any adjustment under paragraph (1)(A)(ii)), increased by the SNF market basket percentage increase for such subsequent fiscal year minus 2.0 percentage points.

"(e) DETERMINATION OF FACILITY-SPECIFIC STAY AMOUNTS.—The 'facility-specific stay amount' for a skilled nursing facility for a cost reporting period is—

"(1) the sum of—

"(A) the amount of payments made to the facility under part A during the period which are attributable to covered non-routine services furnished during a stay; and

"(B) the Secretary's best estimate of the amount of payments made under part B during the period for covered non-routine services furnished to all residents of the facility to whom the facility provided extended care services for which payment was made under part A during the period (without regard to whether or not the services were furnished by the facility, by others under arrangement with them made by the facility under any other contracting or *consulting arrangement, or otherwise), as estimated by the Secretary; divided by*

"(2) the average number of days per stay for all residents of the skilled nursing facility receiving extended care services furnished during the benefit period established under section 1812(a)(2).

"(f) INTENSIVE NURSING OR THERAPY NEEDS.—

"(1) IN GENERAL.—In applying subsection (b) to covered non-routine services furnished during a stay beginning during a cost reporting period to a resident of a skilled nursing facility who requires intensive nursing or therapy services, the per stay amount for such resident shall be the per stay amount developed under paragraph (2) instead of the per stay amount determined under subsection (d)(1)(A).

"(2) PER STAY AMOUNT FOR INTENSIVE NEED RESIDENTS.—Upon the implementation of the payment method established under this section, the Secretary, after consultation with the Medicare Payment Review Commission and skilled nursing facility experts, shall develop and publish a per stay amount for residents of a skilled nursing facility who require intensive nursing or therapy services..

"(3) BUDGET NEUTRALITY.—The Secretary shall adjust payments under subsection (b) in a manner that ensures that total payments for covered non-routine services under this section are not greater or less than total payments for such services would have been but for the application of paragraph (1).

"(g) EXCEPTIONS AND ADJUSTMENTS TO AMOUNTS.—

"(1) IN GENERAL.—The Secretary may make exceptions and adjustments to the cost reporting period amounts applicable to a skilled nursing facility under subsection (c)(2) for a cost reporting period, except that the total amount of any additional payments made under this section for covered non-routine services during the cost reporting period as a result of such exceptions and adjustments may not exceed 5 percent of the aggregate payments made to all skilled nursing facilities for covered non-routine services during the cost reporting period (determined without regard to this paragraph).

"(2) BUDGET NEUTRALITY.—The Secretary shall adjust payments under subsection (b) in a manner that ensures that total payments for covered non-routine services under this section are not greater or less than total payments for such services would have been but for the application of paragraph (1).

"(h) SPECIAL TREATMENT FOR MEDICARE LOW VOLUME SKILLED NURSING FACILITIES.—The Secretary shall determine an appropriate manner in which to apply this section, taking into account the purposes of this section, to non-routine costs of a skilled nursing facility for which payment is made for routine service costs during a cost reporting period on the basis of prospective payments under section 1888(d).

"(i) SPECIAL RULE FOR X-RAY SERVICES.—Before furnishing a covered non-routine service consisting of an X-ray service for which payment may be made under part A or part B to a resident, a skilled nursing facility shall consider whether furnishing the service through a provider of portable X-ray service services would be ap-

propriate, taking into account the cost effectiveness of the service and the convenience to the resident.

"(j) MAINTAINING SAVINGS FROM PAYMENT SYSTEM.—The prospective payment system established under section 1889 shall reflect the payment methodology established under this section for covered non-routine services.".

(b) CONFORMING AMENDMENT.—Section 1814(b) (42 U.S.C. 1395f(b)) is amended in the matter preceding paragraph (1) by striking "1813 and 1886" and inserting "1813, 1886, 1888, 1888A, and 1889".

SEC. 8413. PAYMENTS FOR ROUTINE SERVICE COSTS.

(a) MAINTAINING SAVINGS RESULTING FROM TEMPORARY FREEZE ON PAYMENT INCREASES.—

(1) BASING UPDATES TO PER DIEM COST LIMITS ON LIMITS FOR FISCAL YEAR 1993.—

(A) IN GENERAL.—The last sentence of section 1888(a) (42 U.S.C. 1395yy(a)) is amended by adding at the end the following: "(except that such updates may not take into account any changes in the routine service costs of skilled nursing facilities occurring during cost reporting periods which began during fiscal year 1994 or fiscal year 1995).".

(B) NO EXCEPTIONS PERMITTED BASED ON AMENDMENT.—The Secretary of Health and Human Services shall not consider the amendment made by subparagraph (A) in making any adjustments pursuant to section 1888(c) of the Social Security Act.

(2) PAYMENTS TO LOW MEDICARE VOLUME SKILLED NURSING FACILITIES.—Any change made by the Secretary of Health and Human Services in the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act for cost reporting periods beginning on or after October 1, 1995, may not take into account any changes in the costs of services occurring during cost reporting periods which began during fiscal year 1994 or fiscal year 1995.

(b) BASING 1996 LIMITS ON NEW DEFINITION OF ROUTINE COSTS.—The Secretary of Health and Human Services shall take into account the new definition of routine service costs under section 1888(e) of the Social Security Act, as added by section 8411, in determining the routine per diem cost limits under section 1888(a) for fiscal year 1996 and each fiscal year thereafter.

(c) ESTABLISHMENT OF SCHEDULE FOR MAKING ADJUSTMENTS TO LIMITS.—Section 1888(c) (42 U.S.C. 1395yy(c)) is amended by striking the period at the end of the second sentence and inserting ", and may only make adjustments under this subsection with respect to a facility which applies for an adjustment during an annual application period established by the Secretary.".

(d) LIMITATION TO EXCEPTIONS PROCESS OF THE SECRETARY.—Section 1888(c) (42 U.S.C. 1395yy(c)) is amended—

(1) by striking "(c) The Secretary" and inserting "(c)(1) Subject to paragraph (2), the Secretary"; and

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

"(2) The Secretary may not make any adjustments under this subsection in the limits set forth in subsection (a) for a cost reporting period beginning during a fiscal year to the extent that the total

amount of the additional payments made under this title as a result of such adjustments is greater than an amount equal to—

"(A) for cost reporting periods beginning during fiscal year 1996, the total amount of the additional payments made under this title as a result of adjustments under this subsection for cost reporting periods beginning during fiscal year 1994 increased (on a compounded basis) by the SNF market basket percentage increase (as defined in section 1888A(a)(2)) for each fiscal year; and

"(B) for cost reporting periods beginning during a subsequent fiscal year, the amount determined under this paragraph for the preceding fiscal year, increased by the SNF market basket percentage increase (as defined in section 1888A(a)(2)) for each fiscal year.".

(e) MAINTAINING SAVINGS FROM PAYMENT SYSTEM.—The prospective payment system established under section 1889 of the Social Security Act, as added by section 8410, shall reflect the routine per diem cost limits under section 1888(a) of such Act.

SEC. 8414. REDUCTIONS IN PAYMENT FOR CAPITAL-RELATED COSTS.

(a) IN GENERAL.—Section 1861(v)(1) (42 U.S.C. 1395x(v)(1)), as amended by section 8405(a), is amended by adding at the end the following new subparagraph:

"(U) Such regulations shall provide that, in determining the amount of the payments that may be made under this title with respect to all the capital-related costs of skilled nursing facilities, the Secretary shall reduce the amounts of such payments otherwise established under this title by 10 percent for payments attributable to portions of cost reporting periods occurring beginning in fiscal years 1996 through 2002.".

(b) MAINTAINING SAVINGS RESULTING FROM 10 PERCENT CAPITAL REDUCTION.—The prospective payment system established under section 1889 of the Social Security Act, as added by section 8410 of this Act, shall reflect the 10 percent reduction in payments for capital-related costs of skilled nursing facilities as such reduction is in effect under section 1861(v)(1)(U) of the Social Security Act, as added by subsection (a).

SEC. 8415. TREATMENT OF ITEMS AND SERVICES PAID FOR UNDER PART B.

(a) REQUIRING PAYMENT FOR ALL ITEMS AND SERVICES TO BE MADE TO FACILITY.—

(1) IN GENERAL.—The first sentence of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended—

(A) by striking "and (D)" and inserting "(D)"; and

(B) by striking the period at the end and inserting the following: ", and (E) in the case of an item or service (other than a portable X-ray or portable electrocardiogram treated as a physician's service for purposes of section 1848(j)(3)) furnished to an individual who (at the time the item or service is furnished) is a resident of a skilled nursing facility, payment shall be made to the facility (without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting ar-

rangement, or otherwise), except that this subparagraph shall not preclude a physician (as defined in section 1861(r)(1)) from receiving payment for physician's services provided to a resident of a skilled nursing facility if such services are not covered non-routine services (as defined in section 1888A(a)(1)) or services for which routine service costs (as defined in section 1888(e)) are determined.".

(2) EXCLUSION FOR ITEMS AND SERVICES NOT BILLED BY FACILITY.—Section 1862(a) (42 U.S.C. 1395y(a)) is amended—

(A) by striking "or" at the end of paragraph (14);

(B) by striking the period at the end of paragraph (15) and inserting "; or"; and

(C) by inserting after paragraph (15) the following new paragraph:

"(16) where such expenses are for covered non-routine services (as defined in section 1888A(a)(1)) (other than a portable X-ray or portable electrocardiogram treated as a physician's service for purposes of section 1848(j)(3)) furnished to an individual who is a resident of a skilled nursing facility and for which the claim for payment under this title is not submitted by the facility.".

(3) CONFORMING AMENDMENT.—Section 1832(a)(1) (42 U.S.C. 1395k(a)(1)) is amended by striking "(2);" and inserting "(2) and section 1842(b)(6)(E);".

(b) REDUCTION IN PAYMENTS FOR ITEMS AND SERVICES FURNISHED BY OR UNDER ARRANGEMENTS WITH FACILITIES.—Section 1861(v)(1) (42 U.S.C. 1395x(v)(1)), as amended by section 8405(a) and section 8414(a), is amended by adding at the end the following new subparagraph:

"(V) In the case of an item or service furnished by a skilled nursing facility (or by others under arrangement with them made by a skilled nursing facility or under any other contracting or consulting arrangement or otherwise) for which payment is made under part B in an amount determined in accordance with section 1833(a)(2)(B), the Secretary shall reduce the reasonable cost for such item or service otherwise determined under clause (i)(I) of such section by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1996 through 2002.".

SEC. 8416. MEDICAL REVIEW PROCESS.

In order to ensure that medicare beneficiaries are furnished appropriate extended care services, the Secretary of Health and Human Services shall establish and implement a thorough medical review process to examine the effects of the amendments made by this subchapter on the quality of extended care services furnished to medicare beneficiaries. In developing such a medical review process, the Secretary shall place a particular emphasis on the quality of non-routine covered services for which payment is made under section 1888A of the Social Security Act.

SEC. 8417. REPORT BY MEDICARE PAYMENT REVIEW COMMISSION.

Not later than October 1, 1997, the Medicare Payment Review Commission shall submit to Congress a report on the system under which payment is made under the medicare program for extended *care services furnished by skilled nursing facilities, and shall include in the report the following:*

(1) An analysis of the effect of the methodology established under section 1888A of the Social Security Act (as added by section 8412) on the payments for, and the quality of, extended care services under the medicare program.

(2) An analysis of the advisability of determining the amount of payment for covered non-routine services of facilities (as described in such section) on the basis of the amounts paid for such services when furnished by suppliers under part B of the medicare program.

(3) An analysis of the desirability of maintaining separate routine cost-limits for hospital-based and freestanding facilities in the costs of extended care services recognized as reasonable under the medicare program.

(4) An analysis of the quality of services furnished by skilled nursing facilities.

(5) An analysis of the adequacy of the process and standards used to provide exceptions to the limits described in paragraph (3).

(6) An analysis of the effect of the prospective payment methodology established under section 1889 of the Social Security Act (as added by section 8410) on the payments for, and the quality of, extended care services under the medicare program, including an evaluation of the baseline used in establishing a system for payment for extended care services furnished by skilled nursing facilities.

SEC. 8418. EFFECTIVE DATE.

Except as otherwise provided in this subchapter, the amendments made by this subchapter shall apply to services furnished during cost reporting periods (or portions of cost reporting periods) beginning on or after October 1, 1995.

CHAPTER 3—OTHER PROVISIONS RELATING TO PART A

SEC. 8421. PAYMENTS FOR HOSPICE SERVICES.

Section 1814(i)(1)(C)(ii) (42 U.S.C. 1395f(i)(1)(C)(ii)) is amended by striking subclauses (IV), (V), and (VI), and inserting the following subclauses:

"(IV) for fiscal years 1996 through 2002, the market basket percentage increase for the fiscal year minus 2.0 percentage points; and

"(V) for a subsequent fiscal year, the market basket percentage increase for the fiscal year.".

SEC. 8422. PERMANENT EXTENSION OF HEMOPHILIA PASS-THROUGH.

Effective as if included in the enactment of OBRA–1989, section 6011(d) of such Act (as amended by section 13505 of OBRA–1993) is amended by striking "and shall expire September 30, 1994".

Subtitle F—Provisions Relating to Part B

CHAPTER 1—PAYMENT REFORMS

SEC. 8501. PAYMENTS FOR PHYSICIANS' SERVICES.

(a) ESTABLISHING UPDATE TO CONVERSION FACTOR TO MATCH SPENDING UNDER SUSTAINABLE GROWTH RATE.—

(1) UPDATE.—

(A) IN GENERAL.—Section 1848(d)(3) (42 U.S.C. 1395w–4(d)(3)) is amended to read as follows:

"(3) UPDATE.—

"(A) IN GENERAL.—Unless Congress otherwise provides, subject to subparagraph (E), for purposes of this section the update for a year (beginning with 1997) is equal to the product of—

"(i) 1 plus the Secretary's estimate of the percentage increase in the medicare economic index (described in the fourth sentence of section 1842(b)(3)) for the year (divided by 100), and

"(ii) 1 plus the Secretary's estimate of the update adjustment factor for the year (divided by 100),

minus 1 and multiplied by 100.

"(B) UPDATE ADJUSTMENT FACTOR.—The 'update adjustment factor' for a year is equal to the quotient of—

"(i) the difference between (I) the sum of the allowed expenditures for physicians' services furnished during each of the years 1995 through the year involved and (II) the sum of the amount of actual expenditures for physicians' services furnished during each of the years 1995 through the previous year; divided by

"(ii) the Secretary's estimate of allowed expenditures for physicians' services furnished during the year.

"(C) DETERMINATION OF ALLOWED EXPENDITURES.—For purposes of subparagraph (B), allowed expenditures for physicians' services shall be determined as follows (as estimated by the Secretary):

"(i) In the case of allowed expenditures for 1995, such expenditures shall be equal to actual expenditures for services furnished during the 12-month period ending with June 30, 1995.

"(ii) In the case of allowed expenditures for 1996 and each subsequent year, such expenditures shall be equal to allowed expenditures for the previous year, increased by the sustainable growth rate under subsection (f) for the fiscal year which begins during the year.

"(D) DETERMINATION OF ACTUAL EXPENDITURES.—For purposes of subparagraph (B), the amount of actual expenditures for physicians' services furnished during a year shall be equal to the amount of expenditures for such services during the 12-month period ending with June of the previous year.

"(E) RESTRICTION ON VARIATION FROM MEDICARE ECONOMIC INDEX.—Notwithstanding the amount of the update adjustment factor determined under subparagraph (B) for a year, the update in the conversion factor under this paragraph for the year may not be—

"(i) greater than 103 percent of 1 plus the Secretary's estimate of the percentage increase in the medicare economic index (described in the fourth sentence of section 1842(b)(3)) for the year (divided by 100), minus 1 and multiplied by 100; or

"(ii) less than 93 percent of 1 plus the Secretary's estimate of the percentage increase in the medicare economic index (described in the fourth sentence of section 1842(b)(3)) for the year (divided by 100), minus 1 and multiplied by 100.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply to physicians' services furnished on or after January 1, 1997.

(2) CONFORMING AMENDMENTS.—(A) Section 1848(d)(2)(A) (42 U.S.C. 1395w–4(d)(2)(A)) is amended—

(i) in the matter preceding clause (i)—

(I) by striking "(or updates) in the conversion factor (or factors)" and inserting "in the conversion factor";

(II) by striking "(beginning with 1991)" and inserting "(beginning with 1996)"; and

(III) by striking the second sentence;

(ii) by amending clause (ii) to read as follows:

"(ii) such factors as enter into the calculation of the update adjustment factor as described in paragraph (3)(B); and";

(iii) by amending clause (iii) to read as follows:

"(iii) access to services.";

(iv) by striking clauses (iv), (v), and (vi); and

(v) by striking the last sentence.

(B) Section 1848(d)(2)(B) (42 U.S.C. 1395w–4(d)(2)(B)) is amended—

(i) by striking "and" at the end of clause (iii);

(ii) by striking the period at the end of clause (iv) and inserting "; and"; and

(iii) by adding at the end the following new clause:

"(v) changes in volume or intensity of services.".

(C) Section 1848(d)(2) (42 U.S.C. 1395w4–(d)(2)) is further amended—

(i) by striking subparagraphs (C), (D), and (E);

(ii) by redesignating subparagraph (F) as subparagraph (C); and

(iii) in subparagraph (C), as redesignated, by striking "(or updates) in the conversion factor (or factors)" and inserting "in the conversion factor".

(b) REPLACEMENT OF VOLUME PERFORMANCE STANDARD WITH SUSTAINABLE GROWTH RATE.—

(1) IN GENERAL.—Section 1848(f) (42 U.S.C. 1395w–4(f)) is amended by striking paragraphs (2) through (5) and inserting the following:

"(2) SPECIFICATION OF GROWTH RATE.—

"(A) FISCAL YEAR 1996.—The sustainable growth rate for all physicians' services for fiscal year 1996 shall be equal to the product of—

"(i) 1 plus the Secretary's estimate of the percentage change in the medicare economic index for 1996 (described in the fourth sentence of section 1842(b)(3)) (divided by 100),

"(ii) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than private plan enrollees) from fiscal year 1995 to fiscal year 1996,

"(iii) 1 plus the Secretary's estimate of the projected percentage growth in real gross domestic product per capita (divided by 100) from fiscal year 1995 to fiscal year 1996, plus 2 percentage points, and

"(iv) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in fiscal year 1996 (compared with fiscal year 1995) which will result from changes in law (including the Medicare Preservation Act of 1995), determined without taking into account estimated changes in expenditures due to changes in the volume and intensity of physicians' services or changes in expenditures resulting from changes in the update to the conversion factor under subsection (d),

minus 1 and multiplied by 100.

"(B) SUBSEQUENT FISCAL YEARS.—The sustainable growth rate for all physicians' services for fiscal year 1997 and each subsequent fiscal year shall be equal to the product of—

"(i) 1 plus the Secretary's estimate of the percentage change in the medicare economic index for the fiscal year involved (described in the fourth sentence of section 1842(b)(3)) (divided by 100),

"(ii) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than private plan enrollees) from the previous fiscal year to the fiscal year involved,

"(iii) 1 plus the Secretary's estimate of the projected percentage growth in real gross domestic product per capita (divided by 100) from the previous fiscal year to the fiscal year involved, plus 2 percentage points, and

"(iv) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the fiscal year (compared with the previous fiscal year) which will result from changes in law (including changes made by the Secretary in response to section 1895), determined without taking into

account estimated changes in expenditures due to changes in the volume and intensity of physicians' services or changes in expenditures resulting from changes in the update to the conversion factor under subsection (d)(3),

minus 1 and multiplied by 100.

"(3) DEFINITIONS.—In this subsection:

"(A) SERVICES INCLUDED IN PHYSICIANS' SERVICES.—The term 'physicians' services' includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office, but does not include services furnished to a private plan enrollee.

"(B) PRIVATE PLAN ENROLLEE.—The term 'private plan enrollee' means, with respect to a fiscal year, an individual enrolled under this part who has elected to receive benefits under this title for the fiscal year through a MedicarePlus plan offered under part C or through enrollment with an eligible organization with a risk-sharing contract under section 1876.".

(2) CONFORMING AMENDMENTS.—Section 1848(f) (42 U.S.C. 1395w–4(f)) is amended—

(A) in the heading, by striking "VOLUME PERFORMANCE STANDARD RATES OF INCREASE" and inserting "SUSTAINABLE GROWTH RATE";

(B) in paragraph (1)—

(i) in the heading, by striking "VOLUME PERFORMANCE STANDARD RATES OF INCREASE" and inserting "SUSTAINABLE GROWTH RATE";

(ii) in subparagraph (A), in the matter preceding clause (i), by striking "performance standard rates of increase" and inserting "sustainable growth rate"; and

(iii) in subparagraph (A), by striking "HMO enrollees" each place such term appears and inserting "private plan enrollees";

(C) in subparagraph (B), by striking "performance standard rates of increase" and inserting "sustainable growth rate"; and

(D) in subparagraph (C)—

(i) in the heading, by striking "PERFORMANCE STANDARD RATES OF INCREASE" and inserting "SUSTAINABLE GROWTH RATE";

(ii) in the first sentence, by striking "with 1991), the performance standard rates of increase" and all that follows through the first period and inserting "with 1997), the sustainable growth rate for the fiscal year beginning in that year."; and

(iii) in the second sentence, by striking "January 1, 1990, the performance standard rate of increase under subparagraph (D) for fiscal year 1990" and inserting "January 1, 1997, the sustainable growth rate for fiscal year 1997".

(c) ESTABLISHMENT OF SINGLE CONVERSION FACTOR FOR 1996.—

(1) IN GENERAL.—Section 1848(d)(1) (42 U.S.C. 1395w–4(d)(1)) is amended—

(A) by redesignating subparagraph (C) as subparagraph (D); and

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

"(C) SPECIAL RULE FOR 1996.—For 1996, the conversion factor under this subsection shall be $35.42 for all physicians' services.".

(2) CONFORMING AMENDMENTS.—Section 1848 (42 U.S.C. 1395w–4) is amended—

(A) by striking "(or factors)" each place it appears in subsection (d)(1)(A) and (d)(1)(D)(ii) (as redesignated by paragraph (1)(a));

(B) in subsection (d)(1)(A), by striking "or updates";

(C) in subsection (d)(1)(D)(ii) (as redesignated by paragraph (1)(a)), by striking "(or updates)"; and

(D) in subsection (i)(1)(C), by striking "conversion factors" and inserting "the conversion factor".

SEC. 8502. ELIMINATION OF FORMULA-DRIVEN OVERPAYMENTS FOR CERTAIN OUTPATIENT HOSPITAL SERVICES.

(a) AMBULATORY SURGICAL CENTER PROCEDURES.—Section 1833(i)(3)(B)(i)(II) (42 U.S.C. 1395l(i)(3)(B)(i)(II)) is amended—

(1) by striking "of 80 percent"; and

(2) by striking the period at the end and inserting the following: ", less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A).".

(b) RADIOLOGY SERVICES AND DIAGNOSTIC PROCEDURES.—Section 1833(n)(1)(B)(i)(II) (42 U.S.C. 1395l(n)(1)(B)(i)(II)) is amended—

(1) by striking "of 80 percent"; and

(2) by striking the period at the end and inserting the following: ", less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished during portions of cost reporting periods occurring on or after October 1, 1995.

SEC. 8503. EXTENSION OF REDUCTIONS IN PAYMENTS FOR COSTS OF HOSPITAL OUTPATIENT SERVICES.

(a) REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS.—Section 1861(v)(1)(S)(ii)(I) (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by striking "through 1998" and inserting "through 2002".

(b) REDUCTION IN PAYMENTS FOR OTHER COSTS.—Section 1861(v)(1)(S)(ii)(II) (42 U.S.C. 1395x(v)(1)(S)(ii)(II)) is amended by striking "through 1998" and inserting "through 2002".

SEC. 8504. REDUCTION IN UPDATES TO PAYMENT AMOUNTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) CHANGE IN UPDATE.—Section 1833(h)(2)(A)(ii)(IV) (42 U.S.C. 1395l(h)(2)(A)(ii)(IV)) is amended by striking "1994 and 1995" and inserting "1994 through 2002".

(b) LOWERING CAP ON PAYMENT AMOUNTS.—Section 1833(h)(4)(B) (42 U.S.C. 1395l(h)(4)(B)) is amended—

(1) in clause (vi), by striking "and" at the end;

(2) in clause (vii)—

(A) by inserting "and before January 1, 1997," after "1995,", and

(B) by striking the period at the end and inserting ", and"; and

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

"(viii) after December 31, 1996, is equal to 65 percent of such median.".

SEC. 8505. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT.

(a) REDUCTION IN PAYMENT AMOUNTS FOR ITEMS OF DURABLE MEDICAL EQUIPMENT.—

(1) FREEZE IN UPDATE FOR COVERED ITEMS.—Section 1834(a)(14) (42 U.S.C. 1395m(a)(14)) is amended—

(A) by striking "and" at the end of subparagraph (A);

(B) in subparagraph (B)—

(i) by striking "a subsequent year" and inserting "1993, 1994, and 1995", and

(ii) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(C) for each of the years 1996 through 2002, 0 percentage points; and

"(D) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year.".

(2) UPDATE FOR ORTHOTICS AND PROSTHETICS.—Section 1834(h)(4)(A) (42 U.S.C. 1395m(h)(4)(A)) is amended—

(A) by striking "and" at the end of clause (iii);

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following new clause:

"(iv) for each of the years 1996 through 2002, 1 percent, and".

(b) OXYGEN AND OXYGEN EQUIPMENT.—

(1) IN GENERAL.—Section 1834(a)(9)(C) (42 U.S.C. 1395m(a)(9)(C)) is amended—

(A) by striking "and" at the end of clause (iii);

(B) in clause (iv)—

(i) by striking "a subsequent year" and inserting "1993, 1994, and 1995", and

(ii) by striking the period at the end and inserting a semicolon; and

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

"(v) in each of the years 1996 through 2002, is the national limited monthly payment rate computed under subparagraph (B) for the item for the year reduced by the applicable percentage described in subparagraph (D) (but in no case may the amount determined under this clause be less than 70 percent of such national limited payment rate); and

"(vi) in a subsequent year, is the national limited monthly payment rate computed under subparagraph (B) for the item for the year.".

(2) APPLICABLE PERCENTAGE DESCRIBED.—Section 1834(a)(9) (42 1395m(a)(9)) is amended by adding at the end the following new subparagraph:

"(D) APPLICABLE PERCENTAGE DESCRIBED.—In clause (v) of subparagraph (C), the 'applicable percentage' with respect to a year described in such clause is—

"(i) for 1996, 20 percent,

"(ii) for 1997, 21⅔ percent,

"(iii) for 1998, 23⅓ percent,

"(iv) for 1999, 25 percent,

"(v) for 2000, 26⅔ percent,

"(vi) for 2001, 28⅓ percent, and

"(vii) for 2002, 30 percent.".

(c) PAYMENT FREEZE FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT.—In determining the amount of payment under part B of title XVIII of the Social Security Act with respect to parenteral and enteral nutrients, supplies, and equipment during each of the years 1996 through 2002, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1993.

SEC. 8506. UPDATES FOR AMBULATORY SURGICAL SERVICES.

Section 1833(i)(2)(C) (42 U.S.C. 1395l(i)(2)(C)) is amended—

(1) by striking "1996" and inserting "2003"; and

(2) by inserting before the first sentence the following new sentence: "Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), the Secretary shall not update amounts established under such subparagraphs for fiscal years 1996 through 2002."

SEC. 8507. PAYMENTS FOR AMBULANCE SERVICES.

Section 1861(v)(1) (42 U.S.C. 1395x(v)(1)), as amended by section 8405(a), section 8414(a), and section 8415(b), is amended by adding at the end the following new subparagraph:

"(W) In determining the reasonable cost or charge of ambulance services for fiscal years 1996 through 2002, the Secretary shall not recognize any costs in excess of costs recognized as reasonable for fiscal year 1995.".

SEC. 8508. ENSURING PAYMENT FOR PHYSICIAN AND NURSE FOR JOINTLY FURNISHED ANESTHESIA SERVICES.

(a) PAYMENT FOR JOINTLY FURNISHED SINGLE CASE.—

(1) PAYMENT TO PHYSICIAN.—Section 1848(a)(4) (42 U.S.C. 1395w–4(a)(4)) is amended by adding at the end the following new subparagraph:

"(C) PAYMENT FOR SINGLE CASE.—Notwithstanding section 1862(a)(1)(A), with respect to physicians' services consisting of the furnishing of anesthesia services for a single case that are furnished jointly with a certified registered nurse anesthetist, if the carrier determines that the use of both the physician and the nurse anesthetist to furnish the anesthesia service was not medically necessary, the fee

schedule amount for the physicians' services shall be equal to 50 percent (or 55 percent, in the case of services furnished during 1996 or 1997) of the fee schedule amount applicable under this section for anesthesia services personally performed by the physician alone (without regard to this subparagraph). Nothing in this subparagraph may be construed to affect the application of any provision of law regarding balance billing.".

(2) PAYMENT TO CRNA.—Section 1833(l)(4)(B) (42 U.S.C. 1395l(l)(4)(B)) is amended by adding at the end the following new clause:

"(iv) Notwithstanding section 1862(a)(1)(A), in the case of services of a certified registered nurse anesthetist consisting of the furnishing of anesthesia services for a single case that are furnished jointly with a physician, if the carrier determines that the use of both the physician and the nurse anesthetist to furnish the anesthesia service was not medically necessary, the fee schedule amount for the services furnished by the certified registered nurse anesthetist shall be equal to 50 percent (or 40 percent, in the case of services furnished during 1996 or 1997) of the fee schedule amount applicable under section 1848 for anesthesia services personally performed by the physician alone (without regard to this clause).".

(b) EFFECTIVE DATE.—The amendments made by subsections (a) shall apply to services furnished on or after July 1, 1996.

CHAPTER 2—PART B PREMIUM

SEC. 8511. PROMOTING SOLVENCY OF PART A TRUST FUND THROUGH PART B PREMIUM.

(a) IN GENERAL.—Section 1839(e)(1) (42 U.S.C. 1395r(e)(1)) is amended—

(1) in subparagraph (A), by striking "1999" and inserting "2003", and

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

"(C)(i) For each month beginning with January 1996 through December 2002, the amount of the monthly premium under this part shall be increased by an amount equal to 13 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) and applicable to such month.

"(ii) The Secretary shall transfer amounts received pursuant to clause (i) to the Federal Hospital Insurance Trust Fund.

"(iii) In applying section 1844(a), amounts attributable to clause (i) shall not be counted in determining the dollar amount of the premium per enrollee under paragraph (1)(A) or (1)(B).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to premiums for months beginning with January 1996.

SEC. 8512. INCOME-RELATED REDUCTION IN MEDICARE SUBSIDY.

(a) IN GENERAL.—Section 1839 (42 U.S.C. 1395r) is amended by adding at the end the following:

"(h)(1) Notwithstanding the previous subsections of this section, in the case of an individual whose modified adjusted gross income for a taxable year ending with or within a calendar year (as initially determined by the Secretary in accordance with paragraph (3)) exceeds the threshold amount described in paragraph (5)(B), the

Secretary shall increase the amount of the monthly premium for months in the calendar year by an amount equal to the difference between—

"(A) 200 percent of the monthly actuarial rate for enrollees age 65 and over as determined under subsection (a)(1) for that calendar year; and

"(B) the total of the monthly premiums paid by the individual under this section (determined without regard to subsection (b)) during such calendar year.

"(2) In the case of an individual described in paragraph (1) whose modified adjusted gross income exceeds the threshold amount by less than $50,000, the amount of the increase in the monthly premium applicable under paragraph (1) shall be an amount which bears the same ratio to the amount of the increase described in paragraph (1) (determined without regard to this paragraph) as such excess bears to $50,000. In the case of a joint return filed under section 6013 of the Internal Revenue Code of 1986 by spouses both of whom are enrolled under this part, the previous sentence shall be applied by substituting '$60,000' for '$50,000'. The preceding provisions of this paragraph shall not apply to any individual whose threshold amount is zero.

"(3) The Secretary shall make an initial determination of the amount of an individual's modified adjusted gross income for a taxable year ending with or within a calendar year for purposes of this subsection as follows:

"(A) Not later than September 1 of the year preceding the year, the Secretary shall provide notice to each individual whom the Secretary finds (on the basis of the individual's actual modified adjusted gross income for the most recent taxable year for which such information is available or other information provided to the Secretary by the Secretary of the Treasury) will be subject to an increase under this subsection that the individual will be subject to such an increase, and shall include in such notice the Secretary's estimate of the individual's modified adjusted gross income for the year.

"(B) If, during the 30-day period beginning on the date notice is provided to an individual under subparagraph (A), the individual provides the Secretary with information on the individual's anticipated modified adjusted gross income for the year, the amount initially determined by the Secretary under this paragraph with respect to the individual shall be based on the information provided by the individual.

"(C) If an individual does not provide the Secretary with information under subparagraph (B), the amount initially determined by the Secretary under this paragraph with respect to the individual shall be the amount included in the notice provided to the individual under subparagraph (A).

"(4)(A) If the Secretary determines (on the basis of final information provided by the Secretary of the Treasury) that the amount of an individual's actual modified adjusted gross income for a taxable year ending with or within a calendar year is less than or greater than the amount initially determined by the Secretary under paragraph (3), the Secretary shall increase or decrease the amount of the individual's monthly premium under this section (as the case

may be) for months during the following calendar year by an amount equal to 1⁄12 of the difference between—

“(i) the total amount of all monthly premiums paid by the individual under this section during the previous calendar year; and

“(ii) the total amount of all such premiums which would have been paid by the individual during the previous calendar year if the amount of the individual’s modified adjusted gross income initially determined under paragraph (3) were equal to the actual amount of the individual’s modified adjusted gross income determined under this paragraph.

“(B)(i) In the case of an individual for whom the amount initially determined by the Secretary under paragraph (3) is based on information provided by the individual under subparagraph (B) of such paragraph, if the Secretary determines under subparagraph (A) that the amount of the individual’s actual modified adjusted gross income for a taxable year is greater than the amount initially determined under paragraph (3), the Secretary shall increase the amount otherwise determined for the year under subparagraph (A) by interest in an amount equal to the sum of the amounts determined under clause (ii) for each of the months described in clause (ii).

“(ii) Interest shall be computed for any month in an amount determined by applying the underpayment rate established under section 6621 of the Internal Revenue Code of 1986 (compounded daily) to any portion of the difference between the amount initially determined under paragraph (3) and the amount determined under subparagraph (A) for the period beginning on the first day of the month beginning after the individual provided information to the Secretary under subparagraph (B) of paragraph (3) and ending 30 days before the first month for which the individual’s monthly premium is increased under this paragraph.

“(iii) Interest shall not be imposed under this subparagraph if the amount of the individual’s modified adjusted gross income provided by the individual under subparagraph (B) of paragraph (3) was not less than the individual’s modified adjusted gross income determined on the basis of information shown on the return of tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the taxable year involved.

“(C) In the case of an individual who is not enrolled under this part for any calendar year for which the individual’s monthly premium under this section for months during the year would be increased pursuant to subparagraph (A) if the individual were enrolled under this part for the year, the Secretary may take such steps as the Secretary considers appropriate to recover from the individual the total amount by which the individual’s monthly premium for months during the year would have been increased under subparagraph (A) if the individual were enrolled under this part for the year.

“(D) In the case of a deceased individual for whom the amount of the monthly premium under this section for months in a year would have been decreased pursuant to subparagraph (A) if the individual were not deceased, the Secretary shall make a payment to the individual’s surviving spouse (or, in the case of an individual

who does not have a surviving spouse, to the individual's estate) in an amount equal to the difference between—

"(i) the total amount by which the individual's premium would have been decreased for all months during the year pursuant to subparagraph (A); and

"(ii) the amount (if any) by which the individual's premium was decreased for months during the year pursuant to subparagraph (A).

"(5) In this subsection, the following definitions apply:

"(A) The term 'modified adjusted gross income' means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986)—

"(i) determined without regard to sections 135, 911, 931, and 933 of such Code, and

"(ii) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax under such Code.

"(B) The term 'threshold amount' means—

"(i) except as otherwise provided in this paragraph, $60,000,

"(ii) $90,000, in the case of a joint return (as defined in section 7701(a)(38) of such Code), and

"(iii) zero in the case of a taxpayer who—

"(I) is married at the close of the taxable year but does not file a joint return (as so defined) for such year, and

"(II) does not live apart from his spouse at all times during the taxable year.

"(6)(A) The Secretary shall transfer amounts received pursuant to this subsection to the Federal Hospital Insurance Trust Fund.

"(B) In applying section 1844(a), amounts attributable to clause (i) shall not be counted in determining the dollar amount of the premium per enrollee under paragraph (1)(A) or (1)(B).".

(b) CONFORMING AMENDMENTS.—(1) Section 1839 (42 U.S.C. 1395r) is amended—

(A) in subsection (a)(2), by inserting "or section 1839A" after "subsections (b) and (e)";

(B) in subsection (a)(3) of section 1839(a), by inserting "or section 1839A" after "subsection (e)";

(C) in subsection (b), inserting "(and as increased under section 1839A)" after "subsection (a) or (e)"; and

(D) in subsection (f), by striking "if an individual" and inserting the following: "if an individual (other than an individual subject to an increase in the monthly premium under this section pursuant to subsection (h))".

(2) Section 1840(c) (42 U.S.C. 1395r(c)) is amended by inserting "or an individual determines that the estimate of modified adjusted gross income used in determining whether the individual is subject to an increase in the monthly premium under section 1839 pursuant to subsection (h) of such section (or in determining the amount of such increase) is too low and results in a portion of the premium not being deducted," before "he may".

(c) REPORTING REQUIREMENTS FOR SECRETARY OF THE TREASURY.—

(1) In general.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:

"(15) Disclosure of return information to carry out income-related reduction in medicare part b premium.—

"(A) In general.—The Secretary may, upon written request from the Secretary of Health and Human Services, disclose to officers and employees of the Health Care Financing Administration return information with respect to a taxpayer who is required to pay a monthly premium under section 1839 of the Social Security Act. Such return information shall be limited to—

"(i) taxpayer identity information with respect to such taxpayer,

"(ii) the filing status of such taxpayer,

"(iii) the adjusted gross income of such taxpayer,

"(iv) the amounts excluded from such taxpayer's gross income under sections 135 and 911,

"(v) the interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1 to the extent such information is available, and

"(vi) the amounts excluded from such taxpayer's gross income by sections 931 and 933 to the extent such information is available.

"(B) Restriction on use of disclosed information.—Return information disclosed under subparagraph (A) may be used by officers and employees of the Health Care Financing Administration only for the purposes of, and to the extent necessary in, establishing the appropriate monthly premium under section 1839 of the Social Security Act."

(2) Conforming amendment.—Paragraphs (3)(A) and (4) of section 6103(p) of such Code are each amended by striking "or (14)" each place it appears and inserting "(14), or (15)".

(d) Effective Date.—

(1) In general.—The amendments made by subsections (a) and (b) shall apply to the monthly premium under section 1839 of the Social Security Act for months beginning with January 1997.

(2) Information for prior years.—The Secretary of Health and Human Services may request information under section 6013(l)(15) of the Social Security Act (as added by subsection (c)) for taxable years beginning after December 31, 1993.

Subtitle G—Provisions Relating to Parts A and B

CHAPTER 1—PAYMENTS FOR HOME HEALTH SERVICES

SEC. 8601. PAYMENT FOR HOME HEALTH SERVICES.

(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395x et seq.), as amended by section 8102, is amended by adding at the end the following new section:

"PAYMENT FOR HOME HEALTH SERVICES

"SEC. 1894. (a) IN GENERAL.—

"(1) PER VISIT PAYMENTS.—Subject to subsection (c), the Secretary shall make per visit payments beginning with fiscal year 1997 to a home health agency in accordance with this section for each type of home health service described in paragraph (2) furnished to an individual who at the time the service is furnished is under a plan of care by the home health agency under this title (without regard to whether or not the item or service was furnished by the agency or by others under arrangement with them made by the agency, under any other contracting or consulting arrangement, or otherwise).

"(2) TYPES OF SERVICES.—The types of home health services described in this paragraph are the following:

"(A) Part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse.

"(B) Physical therapy.

"(C) Occupational therapy.

"(D) Speech-language pathology services.

"(E) Medical social services under the direction of a physician.

"(F) To the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary.

"(b) ESTABLISHMENT OF PER VISIT RATE FOR EACH TYPE OF SERVICES.—

"(1) IN GENERAL.—The Secretary shall, subject to paragraph (3), establish a per visit payment rate for a home health agency in an area (which shall be the same area used to determine the area wage index applicable to hospitals under section 1886(d)(3)(E)) for each type of home health service described in subsection (a)(2). Such rate shall be equal to the national per visit payment rate determined under paragraph (2) for each such type, except that the labor-related portion of such rate shall be adjusted by the area wage index applicable under section 1886(d)(3)(E) for the area in which the agency is located (as determined without regard to any reclassification of the area under section 1886(d)(8)(B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under section 1886(d)(10) for cost reporting periods beginning after October 1, 1995).

"(2) NATIONAL PER VISIT PAYMENT RATE.—The national per visit payment rate for each type of service described in subsection (a)(2)—

"(A) for fiscal year 1997, is an amount equal to the national average amount paid per visit under this title to home health agencies for such type of service during the most recent 12-month cost reporting period ending on or before June 30, 1994; and

"(B) for each subsequent fiscal year, is an amount equal to the national per visit payment rate in effect for the preceding fiscal year, increased by the home health market basket percentage increase for such subsequent fiscal year minus 2.0 percentage points.

"(3) REBASING OF RATES.—The Secretary shall adjust the national per visit payment rates under this subsection for cost reporting periods beginning on or after October 1, 1999, and every 5 years thereafter, to reflect the most recent available data.

"(4) HOME HEALTH MARKET BASKET PERCENTAGE INCREASE.—For purposes of this subsection, the term 'home health market basket percentage increase' means, with respect to a fiscal year, a percentage (estimated by the Secretary before the beginning of the fiscal year) determined and applied with respect to the types of home health services described in subsection (a)(2) in the same manner as the market basket percentage increase under section 1886(b)(3)(B)(iii) is determined and applied to inpatient hospital services for the fiscal year.

"(c) PER EPISODE LIMIT.—

"(1) AGGREGATE LIMIT.—

"(A) IN GENERAL.—Except as provided in paragraph (2), a home health agency may not receive aggregate per visit payments under subsection (a) for a fiscal year in excess of an amount equal to the sum of the following products determined for each case-mix category for which the agency receives payments:

"(i) The number of episodes of each such case-mix category during the fiscal year; multiplied by

"(ii) the per episode limit determined for such case-mix category for such fiscal year.

"(B) ESTABLISHMENT OF PER EPISODE LIMITS.—

"(i) IN GENERAL.—The per episode limit for a fiscal year for any case-mix category for the area in which a home health agency is located (which shall be the same area used to determine the area wage index applicable to hospitals under section 1886(d)(3)(E)) is equal to—

"(I) the mean number of visits for each type of home health service described in subsection (a)(2) furnished during an episode of such case-mix category in such area during fiscal year 1994, adjusted by the case-mix adjustment factor determined in clause (ii) for the fiscal year involved; multiplied by

"(II) the per visit payment rate established under subsection (b) for such type of home health

service for the fiscal year for which the determination is being made.

"(ii) CASE-MIX ADJUSTMENT FACTOR.—For purposes of clause (i), the case-mix adjustment factor for a year for—

"(I) each of fiscal years 1997 through 2000 is the factor determined by the Secretary to assure that aggregate payments for home health services under this section during the year will not exceed the payment for such services during the previous year as a result of changes in the number and type of home health visits within case-mix categories over the previous year; and

"(II) each subsequent fiscal year, is the factor determined by the Secretary necessary to remove the effects of case-mix increases due to reporting improvements instead of real changes in patients' resource usage.

"(iii) REBASING OF PER EPISODE LIMITS.—Beginning with fiscal year 1999 and every 5 years thereafter, the Secretary shall revise the mean number of home health visits determined under clause (i)(I) for each type of home health service visit described in subsection (a)(2) furnished during an episode in a case-mix category to reflect the most recently available data on the number of visits.

"(iv) DETERMINATION OF AREA.—In the case of an area which the Secretary determines has an insufficient number of home health agencies to establish an appropriate per episode limit, the Secretary may establish an area other than the area used to determine the area wage under section 1886(d)(3)(E)) for purposes of establishing an appropriate per episode limit.

"(C) CASE-MIX CATEGORY.—For purposes of this paragraph, the term 'case-mix category' means each of the 18 case-mix categories established under the Home Health Agency Prospective Payment Demonstration Project conducted by the Health Care Financing Administration. The Secretary may develop an alternate methodology for determining case-mix categories.

"(D) EPISODE.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'episode' means the continuous 120-day period that—

"(I) begins on the date of an individual's first visit for a type of home health service described in subsection (a)(2) for a case-mix category, and

"(II) is immediately preceded by a 60-day period in which the individual did not receive visits for a type of home health service described in subsection (a)(2).

"(ii) TREATMENT OF EPISODES SPANNING COST REPORTING PERIODS.—The Secretary shall provide for such rules as the Secretary considers appropriate re-

garding the treatment of episodes under this paragraph which begin during a cost reporting period and end in a subsequent cost reporting period.

"(E) EXEMPTIONS AND EXCEPTIONS.—The Secretary may provide for exemptions and exceptions to the limits established under this paragraph for a fiscal year as the Secretary deems appropriate, to the extent such exemptions and exceptions do not result in greater payments under this section than the exemptions and exceptions provided under section 1861(v)(1)(L)(ii) in fiscal year 1994, increased by the home health market basket percentage increase for the fiscal year involved (as defined in subsection (b)(4)).

"(2) RECONCILIATION OF AMOUNTS.—

"(A) PAYMENTS IN EXCESS OF LIMITS.—Subject to subparagraph (B), if a home health agency has received aggregate per visit payments under subsection (a) for a fiscal year in excess of the amount determined under paragraph (1) with respect to such home health agency for such fiscal year, the Secretary shall reduce payments under this section to the home health agency in the following fiscal year in such manner as the Secretary considers appropriate (including on an installment basis) to recapture the amount of such excess.

"(B) EXCEPTION FOR HOME HEALTH SERVICES FURNISHED OVER A PERIOD GREATER THAN 165 DAYS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the amount of aggregate per visit payments determined under subsection (a) shall not include payments for home health visits furnished to an individual on or after a continuous period of more than 165 days after an individual begins an episode described in subsection (c)(1)(D) (if such period is not interrupted by the beginning of a new episode).

"(ii) REQUIREMENT OF CERTIFICATION.—Clause (i) shall not apply if the agency has not obtained a physician's certification with respect to the individual requiring such visits that includes a statement that the individual requires such continued visits, the reason for the need for such visits, and a description of such services furnished during such visits.

"(C) SHARE OF SAVINGS.—

"(i) BONUS PAYMENTS.—If a home health agency has received aggregate per visit payments under subsection (a) for a fiscal year in an amount less than the amount determined under paragraph (1) with respect to such home health agency for such fiscal year, the Secretary shall pay such home health agency a bonus payment equal to 50 percent of the difference between such amounts in the following fiscal year, except that the bonus payment may not exceed 5 percent of the aggregate per visit payments made to the agency for the year.

"(ii) INSTALLMENT BONUS PAYMENTS.—The Secretary may make installment payments during a fiscal

year to a home health agency based on the estimated bonus payment that the agency would be eligible to receive with respect to such fiscal year.

“(d) MEDICAL REVIEW PROCESS.—The Secretary shall implement a medical review process (with a particular emphasis on fiscal years 1997 and 1998) for the system of payments described in this section that shall provide an assessment of the pattern of care furnished to individuals receiving home health services for which payments are made under this section to ensure that such individuals receive appropriate home health services. Such review process shall focus on low-cost episodes (as defined by the Secretary under section (e)(3)(C)) and cases described in subsection (c)(2)(B) and shall require recertification by intermediaries at 60 and 165 days into an episode described in subsection (c)(1)(D).

“(e) ADJUSTMENT OF PAYMENTS TO AVOID CIRCUMVENTION OF LIMITS.—

“(1) IN GENERAL.—The Secretary shall provide for appropriate adjustments to payments to home health agencies under this section to ensure that agencies do not circumvent the purpose of this section by—

“(A) discharging patients to another home health agency or similar provider;

“(B) altering corporate structure or name to avoid being subject to this section or for the purpose of increasing payments under this title; or

“(C) undertaking other actions considered unnecessary for effective patient care and intended to achieve maximum payments under this title.

“(2) TRACKING OF PATIENTS THAT SWITCH HOME HEALTH AGENCIES DURING EPISODE.—

“(A) DEVELOPMENT OF SYSTEM.—The Secretary shall develop a system that tracks home health patients that receive home health services described in subsection (a)(2) from more than 1 home health agency during an episode described in subsection (c)(1)(D).

“(B) ADJUSTMENT OF PAYMENTS.—The Secretary shall adjust payments under this section to each home health agency that furnishes an individual with a type of home health service described in subsection (a)(2) to ensure that aggregate payments on behalf of such individual during such episode do not exceed the amount that would be paid under this section if the individual received such services from a single home health agency.

“(3) LOW-COST CASES.—

“(A) IN GENERAL.—The Secretary shall develop and implement a system designed to adjust payments to a home health agency for a fiscal year to eliminate any increase in growth of the percentage distribution of low-cost episodes for which home health services are furnished by the agency over such percentage distribution determined for the agency under subparagraph (B).

“(B) DISTRIBUTION.—The Secretary shall profile each home health agency to determine the distribution of all episodes by length of stay for each agency during the agency’s

first 12-month cost reporting period beginning during fiscal year 1994.

"(C) LOW-COST EPISODE.—For purposes of this paragraph, the Secretary shall define a low-cost episode in a manner that provides that a home health agency has an incentive to be cost efficient in delivering home health services and that the volume of such services does not increase as a result of factors other than patient needs.

"(f) SPECIAL RULE FOR CHRISTIAN SCIENCE PROVIDERS.—

"(1) PAYMENT PERMITTED FOR SERVICES.—Notwithstanding any other provision of this title, payment shall be made under this title for home health services furnished by Christian Science providers who meet applicable requirements of the First Church of Christ, Scientist, Boston, Massachusetts, and are certified for purposes of this title under criteria established by the Secretary, in accordance with a payment methodology established by the Secretary.

"(2) EFFECTIVE DATE.—Paragraph (1) shall apply to services furnished during cost reporting periods which begin after the earlier of—

"(A) the date on which the Secretary establishes the payment methodology and the certification criteria described in paragraph (1), or

"(B) July 1, 1996.

"(g) REPORT BY MEDICARE PAYMENT REVIEW COMMISSION.—During the first 3 years in which payments are made under this section, the Medicare Payment Review Commission shall annually submit a report to Congress on the effectiveness of the payment methodology established under this section that shall include recommendations regarding the following:

"(1) Case-mix and volume increases.

"(2) Quality monitoring of home health agency practices.

"(3) Whether a capitated payment for home care patients receiving care during a continuous period exceeding 165 days is warranted.

"(4) Whether public providers of service are adequately reimbursed.

"(5) On the adequacy of the exemptions and exceptions to the limits provided under subsection (c)(1)(E).

"(6) The appropriateness of the methods provided under this section to adjust the per episode limits and annual payment updates to reflect changes in the mix of services, number of visits, and assignment to case categories to reflect changing patterns of home health care.

"(7) The geographic areas used to determine the per episode limits.".

(b) PAYMENT FOR PROSTHETICS AND ORTHOTICS UNDER PART A.—Section 1814(k) (42 U.S.C. 1395f(k)) is amended—

(1) by inserting "and prosthetics and orthotics" after "durable medical equipment"; and

(2) by inserting "and 1834(h), respectively" after "1834(a)(1)".

(c) CONFORMING AMENDMENTS.—

(1) PAYMENTS UNDER PART A.—Section 1814(b) (42 U.S.C. 1395f(b)), as amended by section 8412(b), is amended in the matter preceding paragraph (1) by striking "1888 and 1888A" and inserting "1888, 1888A, and 1894".

(2) TREATMENT OF ITEMS AND SERVICES PAID UNDER PART B.—

(A) PAYMENTS UNDER PART B.—Section 1833(a)(2) (42 U.S.C. 1395l(a)(2)) is amended—

(i) by amending subparagraph (A) to read as follows:

"(A) with respect to home health services—

"(i) that are a type of home health service described in section 1894(a)(2), and which are furnished to an individual who (at the time the item or service is furnished) is under a plan of care of a home health agency, the amount determined under section 1894;

"(ii) that are not described in clause (i) (other than a covered osteoporosis drug) (as defined in section 1861(kk)), the lesser of—

"(I) the reasonable cost of such services, as determined under section 1861(v), or

"(II) the customary charges with respect to such services;".

(ii) by striking "and" at the end of subparagraph (E);

(iii) by adding "and" at the end of subparagraph (F); and

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

"(G) with respect to items and services described in section 1861(s)(10)(A), the lesser of—

"(i) the reasonable cost of such services, as determined under section 1861(v), or

"(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1814(b)(2);".

(B) REQUIRING PAYMENT FOR ALL ITEMS AND SERVICES TO BE MADE TO AGENCY.—

(i) IN GENERAL.—The first sentence of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)), as amended by section 8415(a)(1), is amended—

(I) by striking "and (E)" and inserting "(E)"; and

(II) by striking the period at the end and inserting the following: ", and (F) in the case of types of home health services described in section 1894(a)(2) furnished to an individual who (at the time the item or service is furnished) is under a

plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise).".

(ii) CONFORMING AMENDMENT.—Section 1832(a)(1) (42 U.S.C. 1395k(a)(1)) is amended by striking "(2);" and inserting "(2) and section 1842(b)(6)(F);".

(C) EXCLUSIONS FROM COVERAGE.—Section 1862(a) (42 U.S.C. 1395y(a)), as amended by section 8415(a)(2), is amended—

(i) by striking "or" at the end of paragraph (15);

(ii) by striking the period at the end of paragraph (16) and inserting "or"; and

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

"(17) where such expenses are for home health services furnished to an individual who is under a plan of care of the home health agency if the claim for payment for such services is not submitted by the agency.".

(3) SUNSET OF REASONABLE COST LIMITATIONS.—Section 1861(v)(1)(L) (42 U.S.C. 1395x(v)(1)(L)) is amended by adding at the end the following new clause:

"(iv) This subparagraph shall apply only to services furnished by home health agencies during cost reporting periods ending on or before September 30, 1996.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1996.

SEC. 8602. MAINTAINING SAVINGS RESULTING FROM TEMPORARY FREEZE ON PAYMENT INCREASES FOR HOME HEALTH SERVICES.

(a) BASING UPDATES TO PER VISIT COST LIMITS ON LIMITS FOR FISCAL YEAR 1993.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by adding at the end the following sentence: "In establishing limits under this subparagraph, the Secretary may not take into account any changes in the costs of the provision of services furnished by home health agencies with respect to cost reporting periods which began on or after July 1, 1994, and before July 1, 1996.".

(b) NO EXCEPTIONS PERMITTED BASED ON AMENDMENT.—The Secretary of Health and Human Services shall not consider the amendment made by subsection (a) in making any exemptions and exceptions pursuant to section 1861(v)(1)(L)(ii) of the Social Security Act.

SEC. 8603. EXTENSION OF WAIVER OF PRESUMPTION OF LACK OF KNOWLEDGE OF EXCLUSION FROM COVERAGE FOR HOME HEALTH AGENCIES.

Section 9305(g)(3) of OBRA–1986, as amended by section 426(d) of the Medicare Catastrophic Coverage Act of 1988 and section 4207(b)(3) of the OBRA–1990 (as renumbered by section 160(d)(4) of *the Social Security Act Amendments of 1994), is amended by striking "December 31, 1995" and inserting "September 30, 1996.".*

SEC. 8604. EXTENSION OF PERIOD OF HOME HEALTH AGENCY CERTIFICATION.

Section 1891(c)(2)(A) (42 U.S.C. 1395bbb(c)(2)(A)) is amended—

(1) by striking "15 months" and inserting "36 months"; and

(2) by striking the second sentence and inserting the following: "The Secretary shall establish a frequency for surveys of home health agencies within this 36-month interval commensurate with the need to assure the delivery of quality home health services.".

PART 2—MEDICARE SECONDARY PAYER IMPROVEMENTS

SEC. 8611. EXTENSION AND EXPANSION OF EXISTING REQUIREMENTS.

(a) DATA MATCH.—

(1) Section 1862(b)(5)(C) (42 U.S.C. 1395y(b)(5)(C)) is amended by striking clause (iii).

(2) Section 6103(l)(12) of the Internal Revenue Code of 1986 is amended by striking subparagraph (F).

(b) APPLICATION TO DISABLED INDIVIDUALS IN LARGE GROUP HEALTH PLANS.—

(1) IN GENERAL.—Section 1862(b)(1)(B) (42 U.S.C. 1395y(b)(1)(B)) is amended—

(A) in clause (i), by striking "clause (iv)" and inserting "clause (iii)",

(B) by striking clause (iii), and

(C) by redesignating clause (iv) as clause (iii).

(2) CONFORMING AMENDMENTS.—Paragraphs (1) through (3) of section 1837(i) (42 U.S.C. 1395p(i)) and the second sentence of section 1839(b) (42 U.S.C. 1395r(b)) are each amended by striking "1862(b)(1)(B)(iv)" each place it appears and inserting "1862(b)(1)(B)(iii)".

(c) INDIVIDUALS WITH END STAGE RENAL DISEASE.—Section 1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is amended—

(1) in the last sentence by striking "October 1, 1998" and inserting "the date of the enactment of the Medicare Preservation Act of 1995"; and

(2) by adding at the end the following new sentence: "Effective for items and services furnished on or after the date of the enactment of the Medicare Preservation Act of 1995, (with respect to periods beginning on or after the date that is 18 months prior to such date), clauses (i) and (ii) shall be applied by substituting '30-month' for '12-month' each place it appears.".

SEC. 8612. IMPROVEMENTS IN RECOVERY OF PAYMENTS.

(a) PERMITTING RECOVERY AGAINST THIRD PARTY ADMINISTRATORS OF PRIMARY PLANS.—Section 1862(b)(2)(B)(ii) (42 U.S.C. 1395y(b)(2)(B)(ii)) is amended—

(1) by striking "under this subsection to pay" and inserting "(directly, as a third-party administrator, or otherwise) to make payment", and

(2) by adding at the end the following: "The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan.".

(b) EXTENSION OF CLAIMS FILING PERIOD.—Section 1862(b)(2)(B) (42 U.S.C. 1395y(b)(2)(B)) is amended by adding at the end the following new clause:

"(v) CLAIMS-FILING PERIOD.—Notwithstanding any other time limits that may exist for filing a claim under an employer group health plan, the United States may seek to recover conditional payments in accordance with this subparagraph where the request for payment is submitted to the entity required or responsible under this subsection to pay with respect to the item or service (or any portion thereof) under a primary plan within the 3-year period beginning on the date on which the item or service was furnished.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after the date of the enactment of this Act.

CHAPTER 3—OTHER ITEMS AND SERVICES UNDER PARTS A AND B

SEC. 8621. MEDICARE COVERAGE OF CERTAIN ANTI-CANCER DRUG TREATMENTS.

(a) COVERAGE OF CERTAIN SELF-ADMINISTERED ANTICANCER DRUGS.—Section 1861(s)(2)(Q) (42 U.S.C. 1395x(s)(2)(Q)) is amended—

(1) by striking "(Q)" and inserting "(Q)(i)"; and

(2) by striking the semicolon at the end and inserting ", and"; and

(3) by adding at the end the following:

"(ii) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer nonsteroidal antiestrogen for the treatment of breast cancer, but only if the manufacturer of such drug has in effect a rebate agreement with the Secretary with respect to such drug which has substantially similar terms and conditions to the terms and conditions for such agreements under section 1927 (as such section is in effect on the date of the enactment of this clause);".

(b) UNIFORM COVERAGE OF ANTICANCER DRUGS IN ALL SETTINGS.—Section 1861(t)(2)(A) (42 U.S.C. 1395x(t)(2)(A)) is amended by inserting "(including a nonsteroidal antiestrogen regimen)" after "regimen".

(c) CONFORMING AMENDMENT.—Section 1834(j)(5)(F)(iv) (42 U.S.C. 1395m(j)(5)(F)(iv)) is amended by striking "prescribed for use" and all that follows through "1861(s)(2)(Q))" and inserting "described in section 1861(s)(2)(Q)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs furnished on or after January 1, 1996.

SEC. 8622. ADMINISTRATIVE PROVISIONS.

(a) INDIAN HEALTH SERVICE FACILITIES.—Nothing in this Act shall be construed to change the status under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of—

(1) a Federally qualified health center (as defined in section 1861(aa)(4) of such Act) which is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act; or

(2) hospitals or skilled nursing facilities of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act), that are eligible for payments under title XVIII of the Social Security Act, in accordance with section 1880 of such Act (42 U.S.C. 1395qq).

(b) CONFORMING AMENDMENT TO CERTIFICATION OF CHRISTIAN SCIENCE PROVIDERS.—

(1) HOSPITALS.—Section 1861(e) (42 U.S.C. 1395x(e)) is amended in the sixth sentence by striking "the First Church of Christ, Scientist, Boston, Massachusetts," and inserting "the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.,".

(2) SKILLED NURSING FACILITIES.—Section 1861(y)(1) (42 U.S.C. 1395x(y)(1)) is amended by striking "the First Church of Christ, Scientist, Boston, Massachusetts," and inserting "the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.,".

(3) GENERAL PROVISIONS.—

(A) UNIFORM REPORTING SYSTEMS.—Section 1122(h) (42 U.S.C. 1320a–1(h)) is amended by striking "the First Church of Christ, Scientist, Boston, Massachusetts" and inserting "the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.".

(B) PEER REVIEW.—Section 1162 (42 U.S.C. 1320c–11) is amended by striking "the First Church of Christ, Scientist, Boston, Massachusetts" and inserting "the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on January 1, 1997.

CHAPTER 4—FAILSAFE

SEC. 8631. FAILSAFE BUDGET MECHANISM.

(a) IN GENERAL.—Title XVIII, as amended by sections 8102(a) and 8601(a), is amended by adding at the end the following new section:

"FAILSAFE BUDGET MECHANISM

"SEC. 1895. (a) REQUIREMENT OF PAYMENT ADJUSTMENTS TO ACHIEVE MEDICARE BUDGET TARGETS.—

"(1) In general.—If the Secretary determines under subsection (e)(3)(C) before a fiscal year (beginning with fiscal year 1998) that—

"(A) the fee-for-service expenditures (as defined in subsection (f) for all sectors of medicare services (as defined in subsection (b)) for the fiscal year, will exceed

"(B) the sum of the allotments specified under subsection (c)(2) for such fiscal year (taking into account any adjustment in the allotment under subsection (g) for that fiscal year) for all sectors,

then, notwithstanding any other provisions of this title, there shall be an adjustment (consistent with subsection (d)) in applicable payment rates or payments for items and services included in each excess spending sector in the fiscal year. In this section, the term 'aggregate excess spending' means, for a fiscal year, the amount by which the amount described in subparagraph (A) (for the fiscal year) exceeds the amount described in subparagraph (B) for such year.

"(2) Excess spending sector.—In this section, the term 'excess spending sector' means, for a fiscal year, a sector of medicare services for which the Secretary determines under subsection (e)(3)(C)—

"(A) the fee-for-service expenditures (as defined in subsection (f)) for all the fiscal year, will exceed

"(B) the allotment specified under subsection (c)(2) for such fiscal year (taking into account any adjustment in the allotment under subsection (g) for that fiscal year).

In this section, the term 'excess spending' means, for a fiscal year with respect to such a sector, the amount by which the amount described in subparagraph (A) (for the fiscal year and sector) exceeds the amount described in subparagraph (B) for such year and sector.

"(b) Sectors of Medicare Services Described.—

"(1) In general.—For purposes of this section, items and services included under each of the following subparagraphs shall be considered to be a separate 'sector' of medicare services:

"(A) Inpatient hospital services.

"(B) Home health services.

"(C) Extended care services (for inpatients of skilled nursing facilities).

"(D) Hospice care.

"(E) Physicians' services (including services and supplies described in section 1861(s)(2)(A)) and services of other health care professionals (including certified registered nurse anesthetists, nurse practitioners, physician assistants, and clinical psychologists) for which separate payment is made under this title.

"(F) Outpatient hospital services and ambulatory facility services.

"(G) Durable medical equipment and supplies, including prosthetic devices and orthotics.

"(H) Diagnostic tests (including clinical laboratory services and x-ray services).

"(I) Other items and services.

"(2) CLASSIFICATION OF ITEMS AND SERVICES.—The Secretary shall classify each type of items and services covered and paid for separately under this title into one of the sectors specified in paragraph (1). After publication of such classification under subsection (e)(1), the Secretary is not authorized to make substantive changes in such classification.

"(c) ALLOTMENT.—

"(1) ALLOTMENTS FOR EACH SECTOR.—For purposes of this section, subject to subsection (g)(1), the allotment for a sector of medicare services for a fiscal year is equal to the product of—

"(A) the total allotment for the fiscal year established under paragraph (2), and

"(B) the allotment proportion (specified under paragraph (3)) for the sector and fiscal year involved.

"(2) TOTAL ALLOTMENT.—

"(A) IN GENERAL.—For purposes of this section, the total allotment for a fiscal year is equal to—

"(i) the medicare benefit budget for the fiscal year (as specified under subparagraph (B)), reduced by

"(ii) the amount of payments the Secretary estimates will be made in the fiscal year under the MedicarePlus program under part C.

In making the estimate under clause (ii), the Secretary shall take into account estimated enrollment and demographic profile of individuals electing MedicarePlus products.

"(B) MEDICARE BENEFIT BUDGET.—For purposes of this subsection, subject to subparagraph (C), the 'medicare benefit budget'—

"(i) for fiscal year 1996 is $194.2 billion;

"(i) for fiscal year 1997 is $206.3 billion;

"(ii) for fiscal year 1998 is $217.8 billion;

"(iii) for fiscal year 1999 is $229.2 billion;

"(iv) for fiscal year 2000 is $247.2 billion;

"(v) for fiscal year 2001 is $266.4 billion;

"(vi) for fiscal year 2002 is $289.0 billion; and

"(vii) for a subsequent fiscal year is equal to the medicare benefit budget under this subparagraph for the preceding fiscal year multiplied by the product of (I) 1.05, and (II) 1 plus the annual percentage increase in the average number of medicare beneficiaries from the previous fiscal year to the fiscal year involved.

"(3) MEDICARE ALLOTMENT PROPORTIONS DEFINED.—

"(A) IN GENERAL.—For purposes of this section and with respect to a sector of medicare services for a fiscal year, the term 'medicare allotment proportion' means the ratio of—

"(i) the baseline-projected medicare expenditures (as determined under subparagraph (B)) for the sector for the fiscal year, to

"(ii) the sum of such baseline expenditures for all such sectors for the fiscal year.

"(B) BASELINE-PROJECTED MEDICARE EXPENDITURES.—In this paragraph, the 'baseline, projected medicare expenditures' for a sector of medicare services—

"(i) for fiscal year 1996 is equal to fee-for-service expenditures for such sector during fiscal year 1995, increased by the baseline annual growth rate for such sector of medicare services for fiscal year 1996 (as specified in table in subparagraph (C)); and

"(ii) for a subsequent fiscal year is equal to the baseline-projected medicare expenditures under this subparagraph for the sector for the previous fiscal year increased by the baseline annual growth rate for such sector for the fiscal year involved (as specified in such table).

"(C) BASELINE ANNUAL GROWTH RATES.—The following table specifies the baseline annual growth rates for each of the sectors for different fiscal years:

[In percent]

"For the following sector—	Baseline annual growth rates for fiscal year—						
	1996	1997	1998	1999	2000	2001	2002 and thereafter
(A) Inpatient hospital services	5.7	5.6	6.0	6.1	5.7	5.5	5.2
(B) Home health services	17.2	15.1	11.7	9.1	8.4	8.1	7.9
(C) Extended care services	19.7	12.3	9.3	8.7	8.6	8.4	8.0
(D) Hospice care	32.0	24.0	18.0	15.0	12.0	10.0	9.0
(E) Physicians' services	12.4	9.7	8.7	9.0	9.3	9.6	10.1
(F) Outpatient hospital services	14.7	13.9	14.5	15.0	14.1	13.9	14.0
(G) Durable medical equipment and supplies	16.1	15.5	13.7	12.4	13.2	13.9	14.5
(H) Diagnostic tests	13.1	11.3	11.0	11.4	11.4	11.5	11.9
(I) Other items and services	11.2	10.2	10.9	12.0	11.6	11.6	11.8

"(d) MANNER OF PAYMENT ADJUSTMENT.—

"(1) PAYMENT REDUCTIONS.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall apply a payment reduction for each excess spending sector for a fiscal year in such a manner as to—

"(i) make a change in payment rates (to the maximum extent practicable) at the time payment rates are otherwise changed or subject to change for that fiscal year; and

"(ii) provide for the full appropriate adjustment so that the fee-for-service expenditures for the sector for the fiscal year will be reduced by 133⅓ percent of the amount of the sector reduction target for that sector.

"(B) SECTOR REDUCTION TARGET.—In paragraph (1), the 'sector reduction target' for an excess spending sector for a fiscal year is equal to the product of—

"(i) the amount of the excess spending for such sector and year (as defined in subsection (a)(2)); and

"(ii) the ratio of—

"(I) the aggregate excess spending for the year (as defined in subsection (a)(1)), to

"(II) the sum of the amounts of the excess spending for all excess spending sectors.

"(2) TAKING INTO ACCOUNT VOLUME AND CASH FLOW.—In providing for an adjustment in payments under this subsection for a sector for a fiscal year, the Secretary shall take into account (in a manner consistent with actuarial projections)—

"(A) the impact of such an adjustment on the volume or type of services provided in such sector (and other sectors), and

"(B) the fact that an adjustment may apply to items and services furnished in a fiscal year (payment for which may occur in a subsequent fiscal year),

in a manner that is consistent with assuring that total fee-for-services expenditures for each sector for the fiscal year will not exceed the allotment under subsection (c)(1) for such sector for such year.

"(3) PROPORTIONALITY OF REDUCTIONS WITHIN A SECTOR.—In making adjustments under this subsection in payment for items and services included within a sector of medicare services for a fiscal year, the Secretary shall provide for such an adjustment that results (to the maximum extent feasible) in the same percentage reductions in aggregate Federal payments under parts A and B for the different classes of items and services included within the sector for the fiscal year.

"(4) APPLICATION TO PAYMENTS MADE BASED ON PROSPECTIVE PAYMENT RATES DETERMINED ON A FISCAL YEAR BASIS.—

"(A) IN GENERAL.—In applying subsection (a) with respect to items and services for which payment is made under part A or B on the basis of rates that are established on a prospective basis for (and in advance of) a fiscal year, the Secretary shall provide for the payment adjustment under such subsection through an appropriate reduction in such rates established for items and services furnished (or, in the case of payment for operating costs of inpatient hospital services of subsection (d) hospitals and subsection (d) Puerto Rico hospitals (as defined in paragraphs (1)(B) and (9)(A) of section 1886(d)), discharges occurring) during such year.

"(B) DESCRIPTION OF APPLICATION TO SPECIFIC SERVICES.—The payment adjustment described in subparagraph (A) applies for a fiscal year to at least the following:

"(i) UPDATE FACTOR FOR PAYMENT FOR OPERATING COSTS OF INPATIENT HOSPITAL SERVICES OF PPS HOSPITALS.—To the computation of the applicable percentage increase specified in section 1886(d)(3)(B)(i) for discharges occurring in the fiscal year.

"(ii) HOME HEALTH SERVICES.—To the extent payment amounts for home health services are based on per visit payment rates under section 1894, to the computation of the increase in the national per visit payment rates established for the year under section 1894(b)(2)(B).

"(iii) HOSPICE CARE.—To the update of payment rates for hospice care under section 1814(i) for services furnished during the fiscal year.

"(iv) UPDATE FACTOR FOR PAYMENT OF OPERATING COSTS OF INPATIENT HOSPITAL SERVICES OF PPS-EXEMPT HOSPITALS.—To the computation of the target amount under section 1886(b)(3) for discharges occurring during the fiscal year.

"(v) COVERED NON-ROUTINE SERVICES OF SKILLED NURSING FACILITIES.—To the computation of the facility per stay limits for the year under section 1888A(d) for covered non-routine services of a skilled nursing facility (as described in such section).

"(5) APPLICATION TO PAYMENTS MADE BASED ON PROSPECTIVE PAYMENT RATES DETERMINED ON A CALENDAR YEAR BASIS.—

"(A) IN GENERAL.—In applying subsection (a) for a fiscal year with respect to items and services for which payment is made under part A or B on the basis of rates that are established on a prospective basis for (and in advance of) a calendar year, the Secretary shall provide for the payment adjustment under such subsection through an appropriate reduction in such rates established for items and services furnished at any time during such calendar year as follows:

"(i) For fiscal year 1997, the reduction shall be made for payment rates during calendar year 1997 in a manner so as to achieve the necessary payment reductions for such fiscal year for items and services furnished during the first 3 quarters of calendar year 1997.

"(ii) For a subsequent fiscal year, the reduction shall be made for payment rates during the calendar year in which the fiscal year ends in a manner so as to achieve the necessary payment reductions for such fiscal year for items and services furnished during the first 3 quarters of the calendar year, but also taking into account the payment reductions made in the first quarter of the fiscal year resulting from payment reductions made under this paragraph for the previous calendar year.

"(iii) Payment rate reductions effected under this subparagraph for a calendar year and applicable to the last 3 quarters of the fiscal year in which the calendar year ends shall continue to apply during the first quarter of the succeeding fiscal year.

"(B) APPLICATION IN SPECIFIC CASES.—The payment adjustment described in subparagraph (A) applies for a fiscal year to at least the following:

"(i) UPDATE IN CONVERSION FACTOR FOR PHYSICIANS' SERVICES.—To the computation of the conversion factor under subsection (d) of section 1848 used in the fee schedule established under subsection (b) of

such section for items and services furnished during the calendar year in which the fiscal year ends.

"(ii) PAYMENT RATES FOR OTHER HEALTH CARE PROFESSIONALS.—To the computation of payments for professional services, furnished during the calendar year in which the fiscal year ends, of certified registered nurse anesthetists under section 1833(l), nurse midwives, physician assistants, nurse practitioners and clinical nurse specialists under section 1833(r), clinical psychologists, clinical social workers, physical or occupational therapists, and any other health professionals for which payment rates are based (in whole or in part) on payments for physicians' services.

"(iii) UPDATE IN LAB FEE SCHEDULE.—To the computation of the fee schedule amount under section 1833(h)(2) for clinical diagnostic laboratory services furnished during the calendar year in which the fiscal year ends.

"(iv) UPDATE IN REASONABLE CHARGES FOR VACCINES.—To the computation of the reasonable charge for vaccines described in section 1861(s)(10) for vaccines furnished during the calendar year in which the fiscal year ends.

"(v) DURABLE MEDICAL EQUIPMENT-RELATED ITEMS.—To the computation of the payment basis under section 1834(a)(1)(B) for covered items described in section 1834(a)(13), for services furnished during the calendar year in which the fiscal year ends.

"(vi) RADIOLOGIST SERVICES.—To the computation of conversion factors for radiologist services under section 1834(b), for services furnished during the calendar year in which the fiscal year ends.

"(vii) SCREENING MAMMOGRAPHY.—To the computation of payment rates for screening mammography under section 1834(c)(1)(C)(ii), for screening mammography performed during the calendar year in which the fiscal year ends.

"(viii) PROSTHETICS AND ORTHOTICS..—To the computation of the amount to be recognized under section 1834(h) for payment for prosthetic devices and orthotics and prosthetics, for items furnished during the calendar year in which the fiscal year ends.

"(ix) SURGICAL DRESSINGS.—To the computation of the payment amount referred to in section 1834(i)(1)(B) for surgical dressings, for items furnished during the calendar year in which the fiscal year ends.

"(x) PARENTERAL AND ENTERAL NUTRITION.—To the computation of reasonable charge screens for payment for parenteral and enteral nutrition under section 1834(h), for nutrients furnished during the calendar year in which the fiscal year ends.

"(xi) AMBULANCE SERVICES.—To the computation of limits on reasonable charges for ambulance services,

for services furnished during the calendar year in which the fiscal year ends.

"(6) APPLICATION TO PAYMENTS MADE BASED ON COSTS DURING A COST REPORTING PERIOD.—

"(A) IN GENERAL.—In applying subsection (a) for a fiscal year with respect to items and services for which payment is made under part A or B on the basis of costs incurred for items and services in a cost reporting period, the Secretary shall provide for the payment adjustment under such subsection for a fiscal year through an appropriate proportional reduction in the payment for costs for such items and services incurred at any time during each cost reporting period any part of which occurs during the fiscal year involved, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs during the fiscal year involved.

"(B) APPLICATION IN SPECIFIC CASES.—The payment adjustment described in subparagraph (A) applies for a fiscal year to at least the following:

"(i) CAPITAL-RELATED COSTS OF HOSPITAL SERVICES.—To the computation of payment amounts for inpatient and outpatient hospital services under sections 1886(g) and 1861(v) for portions of cost reporting periods occurring during the fiscal year.

"(ii) OPERATING COSTS FOR PPS-EXEMPT HOSPITALS.—To the computation of payment amounts under section 1886(b) for operating costs of inpatient hospital services of PPS-exempt hospitals for portions of cost reporting periods occurring during the fiscal year.

"(iii) DIRECT GRADUATE MEDICAL EDUCATION.—To the computation of payment amounts under section 1886(h) for reasonable costs of direct graduate medical education costs for portions of cost reporting periods occurring during the fiscal year.

"(iv) INPATIENT RURAL PRIMARY CARE HOSPITAL SERVICES.—To the computation of payment amounts under section 1814(j) for inpatient rural primary care hospital services for portions of cost reporting periods occurring during the fiscal year.

"(v) EXTENDED CARE SERVICES OF A SKILLED NURSING FACILITY.—To the computation of payment amounts under section 1861(v) for post-hospital extended care services of a skilled nursing facility (other than covered non-routine services subject to section 1888A) for portions of cost reporting periods occurring during the fiscal year.

"(vi) REASONABLE COST CONTRACTS.—To the computation of payment amounts under section 1833(a)(1)(A) for organizations for portions of cost reporting periods occurring during the fiscal year.

"(vii) HOME HEALTH SERVICES.—Subject to paragraph (4)(B)(ii), for payment amounts for home health

services, for portions of cost reporting periods occurring during such fiscal year.

"(7) OTHER.—In applying subsection (a) for a fiscal year with respect to items and services for which payment is made under part A or B on a basis not described in a previous paragraph of this subsection, the Secretary shall provide for the payment adjustment under such subsection through an appropriate proportional reduction in the payments (or payment bases for items and services furnished) during the fiscal year.

"(8) ADJUSTMENT OF PAYMENT LIMITS.—The Secretary shall provide for such proportional adjustment in any limits on payment established under part A or B for items and services within a sector as may be appropriate based on (and in order to properly carry out) the adjustment to the amount of payment under this subsection in the sector.

"(9) REFERENCES TO PAYMENT RATES.—Except as the Secretary may provide, any reference in this title (other than this section) to a payment rate is deemed a reference to such a rate as adjusted under this subsection.

"(e) PUBLICATION OF DETERMINATIONS; JUDICIAL REVIEW.—

"(1) ONE-TIME PUBLICATION OF SECTORS AND GENERAL PAYMENT ADJUSTMENT METHODOLOGY.—Not later than October 1, 1996, the Secretary shall publish in the Federal Register the classification of medicare items and services into the sectors of medicare services under subsection (b) and the general methodology to be used in applying payment adjustments to the different classes of items and services within the sectors.

"(2) INCLUSION OF INFORMATION IN PRESIDENT'S BUDGET.—

"(A) IN GENERAL.—With respect to fiscal years beginning with fiscal year 1999, the President shall include in the budget submitted under section 1105 of title 31, United States Code, information on—

"(i) the fee-for-service expenditures, within each sector, for the second previous fiscal year, and how such expenditures compare to the adjusted sector allotment for that sector for that fiscal year, and

"(ii) actual annual growth rates for fee-for-service expenditures in the different sectors in the second previous fiscal year.

"(B) RECOMMENDATION REGARDING GROWTH FACTORS.—The President may include in such budget for a fiscal year (beginning with fiscal year 1998) recommendations regarding percentages that should be applied (for one or more fiscal years beginning with that fiscal year) instead of the baseline annual growth rates under subsection (c)(3)(C). Such recommendations shall take into account medically appropriate practice patterns.

"(3) DETERMINATIONS CONCERNING PAYMENT ADJUSTMENTS.—

"(A) RECOMMENDATIONS OF COMMISSION.—By not later than March 1 of each year (beginning with 1997), the Medicare Payment Review Commission shall submit to the Secretary and the Congress a report that analyzes the previous operation (if any) of this section and that includes rec-

ommendations concerning the manner in which this section should be applied for the following fiscal year:

"(B) PRELIMINARY NOTICE BY SECRETARY.—Not later than May 15 preceding the beginning of each fiscal year (beginning with fiscal year 1998), the Secretary shall publish in the FEDERAL REGISTER a notice containing the Secretary's preliminary determination, for each sector of medicare services, concerning the following:

"(i) the projected allotment under subsection (c) for such sector for the fiscal year.

"(ii) Whether there will be a payment adjustment for items and services included in such sector for the fiscal year under subsection (a).

"(iii) If there will be such an adjustment, the size of such adjustment and the methodology to be used in making such a payment adjustment for classes of items and services included in such sector.

"(iv) Beginning with fiscal year 1999, the fee-for-service expenditures for such sector for the second preceding fiscal year.

Such notice shall include an explanation of the basis for such determination. Determinations under this subparagraph and subparagraph (C) shall be based on the best data available at the time of such determinations.

"(C) FINAL DETERMINATION.—Not later than September 1 preceding the beginning of each fiscal year (beginning with fiscal year 1998), the Secretary shall publish in the Federal Register a final determination, for each, sector of medicare services, concerning the matters described in subparagraph (B) and an explanation of the reasons for any differences between such determination and the preliminary determination for such fiscal year published under subparagraph (B).

"(4) LIMITATION ON ADMINISTRATIVE OR JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1878 or otherwise of—

"(A) the classification of items and services among the sectors of medicare services under subsection (b),

"(B) the determination of the amounts of allotments for the different sectors of medicare services under subsection (c),

"(C) the determination of the amount (or method of application) of any payment adjustment under subsection (d), or

"(D) any adjustment in an allotment effected under subsection (g).

"(f) FEE-FOR-SERVICE EXPENDITURES DEFINED.—In this section, the term "fee-for-service expenditures', for items and services within a sector of medicare services in a fiscal year, means amounts payable for such items and services which are furnished during the fiscal year, and—

"(1) includes types of expenses otherwise reimbursable under parts A and B (including administrative costs incurred

by organizations described in sections 1816 and 1842) with respect to such items and services, and

"(2) does not include amounts paid under part C.

"(g) LOOK-BACK ADJUSTMENT IN ALLOTMENTS TO REFLECT ACTUAL EXPENDITURES.—

"(1) DETERMINATIONS.—

"(A) IN GENERAL.—If the Secretary estimates under subsection (e)(3)(B) with respect to a particular fiscal year (beginning with fiscal year 1998) that—

"(i) the fee-for-service expenditures for all sectors of medicare services for the second preceding fiscal year, exceeded

"(ii) the sum of the adjusted allotments for all sectors for such year (as defined in paragraph (2)),

then the allotment for each final excess spending sector (as defined in subparagraph (B)(i)) for the particular fiscal year shall be reduced by the look-back sector reduction amount determined under subparagraph (B)(ii) for such sector and year.

"(B) FINAL EXCESS SPENDING SECTORS.—

"(i) IN GENERAL.—In this paragraph, the term final excess spending sector' means, for a fiscal year, a sector of medicare services for which the Secretary determines under subsection (e)(B) that—

"(I) the fee-for-service expenditures (as defined in subsection (f) for the fiscal year, exceeded

"(II) the adjusted allotment for such fiscal year.

For purposes of clause (ii), the term 'final excess spending' means, for a fiscal year with respect to such a sector, the amount by which the amount described in subclause (I) (for the fiscal year and sector) exceeds the amount described in subclause (II) for such year and sector.

"(ii) LOOK BACK SECTOR REDUCTION AMOUNT.—In subparagraph (A)(i), the 'look back sector reduction amount' for a final excess spending sector for a fiscal year is equal to the product of—

"(I) the amount of the final excess spending for such sector and year (as defined in clause (i)); and

"(II) the ratio of—

"(a) the aggregate final excess spending for the year (described in subparagraph (A)(i)), to

"(b) the sum of the amounts of the final excess spending for all final excess spending sectors.

"(2) ADJUSTED ALLOTMENT.—The adjusted allotment under this paragraph for a sector for a fiscal year is—

"(A) the amount that would be computed as the allotment under subsection (c) for the sector for the fiscal year if the actual amount of payments made in the fiscal year under the MedicarePlus program under part C in the fiscal

year were substituted for the amount described in subsection (c)(2)(A)(ii) for that fiscal year,

"(B) adjusted to take into account the amount of any adjustment under paragraph (1) for that fiscal year (based on expenditures in the second preceding fiscal year).".

(b) REPORT OF TRUSTEES ON GROWTH RATE IN PART A EXPENDITURES.—Section 1817 (42 U.S.C. 1395i) is amended by adding at the end the following new subsection:

"(k) Each annual report provided in subsection (b)(2) shall include information regarding the annual rate of growth in program expenditures that would be required to maintain the financial solvency of the Trust Fund and the extent to which the provisions of section 1895 restrain the rate of growth of expenditures under this part in order to achieve such solvency.".

Subtitle H—Rural Areas

SEC. 8701. MEDICARE-DEPENDENT, SMALL, RURAL HOSPITAL PAYMENT EXTENSION.

(a) SPECIAL TREATMENT EXTENDED.—

(1) PAYMENT METHODOLOGY.—Section 1886(d)(5)(G) (42 U.S.C. 1395ww(d)(5)(G)) is amended—

(A) in clause (i), by striking "October 1, 1994," and inserting "October 1, 1994, or beginning on or after September 1, 1995, and before October 1, 2000,"; and

(B) in clause (ii)(II), by striking "October 1, 1994," and inserting "October 1, 1994, or beginning on or after September 1, 1995, and before October 1, 2000,".

(2) EXTENSION OF TARGET AMOUNT.—Section 1886(b)(3)(D) (42 U.S.C. 1395ww(b)(3)(D)) is amended—

(A) in the matter preceding clause (i), by striking "September 30, 1994," and inserting "September 30, 1994, and for cost reporting periods beginning on or after September 1, 1995, and before October 1, 2000,";

(B) in clause (ii), by striking "and" at the end;

(C) in clause (iii), by striking the period at the end and inserting ", and"; and

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

"(iv) with respect to discharges occurring during September 1995 through fiscal year 1999, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).".

(3) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—Section 13501(e)(2) of OBRA–93 (42 U.S.C. 1395ww note) is amended by striking "or fiscal year 1994" and inserting ", fiscal year 1994, fiscal year 1995, fiscal year 1996, fiscal year 1997, fiscal year 1998, or fiscal year 1999".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to discharges occurring on or after September 1, 1995.

SEC. 8702. MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.

(a) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.—Section 1820 (42 U.S.C. 1395i–4) is amended to read as follows:

“MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM

“SEC. 1820. (a) ESTABLISHMENT.—Any State that submits an application in accordance with subsection (b) may establish a medicare rural hospital flexibility program described in subsection (c).

“(b) APPLICATION.—A State may establish a medicare rural hospital flexibility program described in subsection (c) if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing—

“(1) assurances that the State—

“(A) has developed, or is in the process of developing, a State rural health care plan that—

“(i) provides for the creation of one or more rural health networks (as defined in subsection (d)) in the State,

“(ii) promotes regionalization of rural health services in the State, and

“(iii) improves access to hospital and other health services for rural residents of the State;

“(B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State, rural hospitals located in the State, and the State Office of Rural Health (or, in the case of a State in the process of developing such plan, that assures the Secretary that the State will consult with its State hospital association, rural hospitals located in the State, and the State Office of Rural Health in developing such plan);

“(2) assurances that the State has designated (consistent with the rural health care plan described in paragraph (1)(A)), or is in the process of so designating, rural nonprofit or public hospitals or facilities located in the State as critical access hospitals; and

“(3) such other information and assurances as the Secretary may require.

“(c) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM DESCRIBED.—

“(1) IN GENERAL.—A State that has submitted an application in accordance with subsection (b), may establish a medicare rural hospital flexibility program that provides that—

“(A) the State shall develop at least one rural health network (as defined in subsection (d)) in the State; and

“(B) at least one facility in the State shall be designated as a critical access hospital in accordance with paragraph (2).

“(2) STATE DESIGNATION OF FACILITIES.—

“(A) IN GENERAL.—A State may designate one or more facilities as a critical access hospital in accordance with subparagraph (B).

“(B) CRITERIA FOR DESIGNATION AS CRITICAL ACCESS HOSPITAL.—A State may designate a facility as a critical access hospital if the facility—

“(i) is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1886(d)(2)(D)) that—

"(I) is located more than a 35-mile drive from a hospital, or another facility described in this subsection, or

"(II) is certified by the State as being a necessary provider of health care services to residents in the area;

"(ii) makes available 24-hour emergency care services that a State determines are necessary for ensuring access to emergency care services in each area served by a critical access hospital;

"(iii) provides not more than 6 acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period not to exceed 72 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 72-hour restriction on a case-by-case basis;

"(iv) meets such staffing requirements as would apply under section 1861(e) to a hospital located in a rural area, except that—

"(I) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open and fully staffed, except insofar as the facility is required to make available emergency care services as determined under clause (ii) and must have nursing services available on a 24-hour basis, but need not otherwise staff the facility except when an inpatient is present,

"(II) the facility may provide any services otherwise required to be provided by a full-time, on-site dietitian, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off-site basis under arrangements as defined in section 1861(w)(1), and

"(III) the inpatient care described in clause (iii) may be provided by a physician's assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

"(v) meets the requirements of subparagraph (I) of paragraph (2) of section 1861(aa).

"(d) RURAL HEALTH NETWORK DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'rural health network' means, with respect to a State, an organization consisting of—

"(A) at least 1 facility that the State has designated or plans to designate as a critical access hospital, and

"(B) at least 1 hospital that furnishes acute care services.

"(2) AGREEMENTS.—

"(A) In general.—Each critical access hospital that is a member of a rural health network shall have an agreement with respect to each item described in subparagraph (B) with at least 1 hospital that is a member of the network.

"(B) Items described.—The items described in this subparagraph are the following:

"(i) Patient referral and transfer.

"(ii) The development and use of communications systems including (where feasible)—

"(I) telemetry systems, and

"(II) systems for electronic sharing of patient data.

"(iii) The provision of emergency and non-emergency transportation among the facility and the hospital.

"(C) Credentialing and quality assurance.—Each critical access hospital that is a member of a rural health network shall have an agreement with respect to credentialing and quality assurance with at least 1—

"(i) hospital that is a member of the network;

"(ii) peer review organization or equivalent entity; or

"(iii) other appropriate and qualified entity identified in the State rural health care plan.

"(e) Certification by the Secretary.—The Secretary shall certify a facility as a critical access hospital if the facility—

"(1) is located in a State that has established a medicare rural hospital flexibility program in accordance with subsection (c);

"(2) is designated as a critical access hospital by the State in which it is located; and

"(3) meets such other criteria as the Secretary may require.

"(f) Permitting Maintenance of Swing Beds.—Nothing in this section shall be construed to prohibit a State from designating or the Secretary from certifying a facility as a critical access hospital solely because, at the time the facility applies to the State for designation as a critical access hospital, there is in effect an agreement between the facility and the Secretary under section 1883 under which the facility's inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed 12 beds (minus the number of inpatient beds used for providing inpatient care in the facility pursuant to subsection (c)(2)(B)(iii)). For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a critical access hospital.

"(g) Waiver of Conflicting Part A Provisions.—The Secretary is authorized to waive such provisions of this part and part C as are necessary to conduct the program established under this section.".

(b) PART A AMENDMENTS RELATING TO RURAL PRIMARY CARE HOSPITALS AND CRITICAL ACCESS HOSPITALS.—

(1) DEFINITIONS.—Section 1861(mm) (42 U.S.C. 1395x(mm)) is amended to read as follows:

"CRITICAL ACCESS HOSPITAL; CRITICAL ACCESS HOSPITAL SERVICES

"(mm)(1) The term 'critical access hospital' means a facility certified by the Secretary as a critical access hospital under section 1820(e).

"(2) The term 'inpatient critical access hospital services' means items and services, furnished to an inpatient of a critical access hospital by such facility, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.".

(2) COVERAGE AND PAYMENT.—(A) Section 1812(a)(1) (42 U.S.C. 1395d(a)(1)) is amended by striking "or inpatient rural primary care hospital services" and inserting "or inpatient critical access hospital services".

(B) Sections 1813(a) and section 1813(b)(3)(A) (42 U.S.C. 1395e(a), 1395e(b)(3)(A)) are each amended by striking "inpatient rural primary care hospital services" each place it appears, and inserting "inpatient critical access hospital services".

(C) Section 1813(b)(3)(B) (42 U.S.C. 1395e(b)(3)(B)) is amended by striking "inpatient rural primary care hospital services" and inserting "inpatient critical access hospital services".

(D) Section 1814 (42 U.S.C. 1395f) is amended—

(i) in subsection (a)(8) by striking "rural primary care hospital" each place it appears and inserting "critical access hospital"; and

(ii) in subsection (b), by striking "other than a rural primary care hospital providing inpatient rural primary care hospital services," and inserting "other than a critical access hospital providing inpatient critical access hospital services,"; and

(iii) by amending subsection (l) to read as follows:

"(l) PAYMENT FOR INPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—The amount of payment under this part for inpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.".

(3) TREATMENT OF CRITICAL ACCESS HOSPITALS AS PROVIDERS OF SERVICES.—(A) Section 1861(u) (42 U.S.C. 1395x(u)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(B) The first sentence of section 1864(a) (42 U.S.C. 1395aa(a)) is amended by striking "a rural primary care hospital" and inserting "a critical access hospital".

(4) CONFORMING AMENDMENTS.—(A) Section 1128A(b)(1) (42 U.S.C. 1320a–7a(b)(1)) is amended by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(B) Section 1128B(c) (42 U.S.C. 1320a–7b(c)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(C) Section 1134 (42 U.S.C. 1320b–4) is amended by striking "rural primary care hospitals" each place it appears and inserting "critical access hospitals".

(D) Section 1138(a)(1) (42 U.S.C. 1320b–8(a)(1)) is amended—

(i) in the matter preceding subparagraph (A), by striking "rural primary care hospital" and inserting "critical access hospital"; and

(ii) in the matter preceding clause (i) of subparagraph (A), by striking "rural primary care hospital" and inserting "critical access hospital".

(E) Section 1816(c)(2)(C) (42 U.S.C. 1395h(c)(2)(C)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(F) Section 1833 (42 U.S.C. 1395l) is amended—

(i) in subsection (h)(5)(A)(iii), by striking "rural primary care hospital" and inserting "critical access hospital";

(ii) in subsection (i)(1)(A), by striking "rural primary care hospital" and inserting "critical access hospital";

(iii) in subsection (i)(3)(A), by striking "rural primary care hospital services" and inserting "critical access hospital services";

(iv) in subsection (l)(5)(A), by striking "rural primary care hospital" each place it appears and inserting "critical access hospital"; and

(v) in subsection (l)(5)(B), by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(G) Section 1835(c) (42 U.S.C. 1395n(c)) is amended by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(H) Section 1842(b)(6)(A)(ii) (42 U.S.C. 1395u(b)(6)(A)(ii)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(I) Section 1861 (42 U.S.C. 1395x) is amended—

(i) in subsection (a)—

(I) in paragraph (1), by striking "inpatient rural primary care hospital services" and inserting "inpatient critical access hospital services"; and

(II) in paragraph (2), by striking "rural primary care hospital" and inserting "critical access hospital";

(ii) in the last sentence of subsection (e), by striking "rural primary care hospital" and inserting "critical access hospital";

(iii) in subsection (v)(1)(S)(ii)(III), by striking "rural primary care hospital" and inserting "critical access hospital";

(iv) in subsection (w)(1), by striking "rural primary care hospital" and inserting "critical access hospital"; and

(v) in subsection (w)(2), by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(J) Section 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is amended by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(K) Section 1866(a)(1) (42 U.S.C 1395cc(a)(1)) is amended—

(i) in subparagraph (F)(ii), by striking "rural primary care hospitals" and inserting "critical access hospitals";

(ii) in subparagraph (H), in the matter preceding clause (i), by striking "rural primary care hospitals" and "rural primary care hospital services" and inserting "critical access hospitals" and "critical access hospital services", respectively;

(iii) in subparagraph (I), in the matter preceding clause (i), by striking "rural primary care hospital" and inserting "critical access hospital"; and

(iv) in subparagraph (N)—

(I) in the matter preceding clause (i), by striking "rural primary care hospitals" and inserting "critical access hospitals", and

(II) in clause (i), by striking "rural primary care hospital" and inserting "critical access hospital".

(L) Section 1866(a)(3) (42 U.S.C 1395cc(a)(3)) is amended—

(i) by striking "rural primary care hospital" each place it appears in subparagraphs (A) and (B) and inserting "critical access hospital"; and

(ii) in subparagraph (C)(ii)(II), by striking "rural primary care hospitals" each place it appears and inserting "critical access hospitals".

(M) Section 1867(e)(5) (42 U.S.C. 1395dd(e)(5)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(c) PAYMENT CONTINUED TO DESIGNATED EACHS.—Section 1886(d)(5)(D) (42 U.S.C. 1395ww(d)(5)(D)) is amended—

(1) in clause (iii)(III), by inserting "as in effect on September 30, 1995" before the period at the end; and

(2) in clause (v)—

(A) by inserting "as in effect on September 30, 1995" after "1820 (i)(1)"; and

(B) by striking "1820(g)" and inserting "1820(e)".

(d) PART B AMENDMENTS RELATING TO CRITICAL ACCESS HOSPITALS.—

(1) COVERAGE.—(A) Section 1861(mm) (42 U.S.C. 1395x(mm)) as amended by subsection (d)(1), is amended by adding at the end the following new paragraph:

"(3) The term 'outpatient critical access hospital services' means medical and other health services furnished by a critical access hospital on an outpatient basis.".

(B) Section 1832(a)(2)(H) (42 U.S.C. 1395k(a)(2)(H)) is amended by striking "rural primary care hospital services" and inserting "critical access hospital services".

(2) PAYMENT.—(A) Section 1833(a) (42 U.S.C. 1395l(a)) is amended in paragraph (6), by striking "outpatient rural primary care hospital services" and inserting "outpatient critical access hospital services".

(B) Section 1834(g) (42 U.S.C. 1395m(g)) is amended to read as follows:

"(g) PAYMENT FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—The amount of payment under this part for outpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after October 1, 1995.

SEC. 8703. ESTABLISHMENT OF RURAL EMERGENCY ACCESS CARE HOSPITALS.

(a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Rural Emergency Access Care Hospital; Rural Emergency Access Care Hospital Services

"(oo)(1) The term 'rural emergency access care hospital' means, for a fiscal year, a facility with respect to which the Secretary finds the following:

"(A) The facility is located in a rural area (as defined in section 1886(d)(2)(D)).

"(B) The facility was a hospital under this title at any time during the 5-year period that ends on the date of the enactment of this subsection.

"(C) The facility is in danger of closing due to low inpatient utilization rates and operating losses, and the closure of the facility would limit the access to emergency services of individuals residing in the facility's service area.

"(D) The facility has entered into (or plans to enter into) an agreement with a hospital with a participation agreement in effect under section 1866(a), and under such agreement the hospital shall accept patients transferred to the hospital from the facility and receive data from and transmit data to the facility.

"(E) There is a practitioner who is qualified to provide advanced cardiac life support services (as determined by the State in which the facility is located) on-site at the facility on a 24-hour basis.

"(F) A physician is available on-call to provide emergency medical services on a 24-hour basis.

"(G) The facility meets such staffing requirements as would apply under section 1861(e) to a hospital located in a rural area, except that—

"(i) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open, except insofar as the facility is required to provide emergency care on a 24-hour basis under subparagraphs (E) and (F); and

"(ii) the facility may provide any services otherwise required to be provided by a full-time, on-site dietitian, pharmacist, laboratory technician, medical technologist, or radiological technologist on a part-time, off-site basis.

"(H) The facility meets the requirements applicable to clinics and facilities under subparagraphs (C) through (J) of paragraph (2) of section 1861(aa) and of clauses (ii) and (iv) of the

second sentence of such paragraph (or, in the case of the requirements of subparagraph (E), (F), or (J) of such paragraph, would meet the requirements if any reference in such subparagraph to a 'nurse practitioner' or to 'nurse practitioners' were deemed to be a reference to a 'nurse practitioner or nurse' or to 'nurse practitioners or nurses'); except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a 'physician' is a reference to a physician as defined in section 1861(r)(1).

"(2) The term 'rural emergency access care hospital services' means the following services provided by a rural emergency access care hospital and furnished to an individual over a continuous period not to exceed 24 hours (except that such services may be furnished over a longer period in the case of an individual who is unable to leave the hospital because of inclement weather):

"(A) An appropriate medical screening examination (as described in section 1867(a)).

"(B) Necessary stabilizing examination and treatment services for an emergency medical condition and labor (as described in section 1867(b)).".

(b) REQUIRING RURAL EMERGENCY ACCESS CARE HOSPITALS TO MEET HOSPITAL ANTI-DUMPING REQUIREMENTS.—Section 1867(e)(5) (42 U.S.C. 1395dd(e)(5)) is amended by striking "1861(mm)(1))" and inserting "1861(mm)(1)) and a rural emergency access care hospital (as defined in section 1861(oo)(1))".

(c) COVERAGE AND PAYMENT FOR SERVICES.—

(1) COVERAGE.—Section 1832(a)(2) (42 U.S.C. 1395k(a)(2)) is amended—

(A) by striking "and" at the end of subparagraph (I);

(B) by striking the period at the end of subparagraph (J) and inserting "; and"; and

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

"(K) rural emergency access care hospital services (as defined in section 1861(oo)(2)).".

(2) PAYMENT BASED ON PAYMENT FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—

(A) IN GENERAL.—Section 1833(a)(6) (42 U.S.C. 1395l(a)(6)), as amended by section 8702(f)(2), is amended by striking "services," and inserting "services and rural emergency access care hospital services,".

(B) PAYMENT METHODOLOGY DESCRIBED.—Section 1834(g) (42 U.S.C. 1395m(g)), as amended by section 8702(f)(2)(B), is amended—

(i) in the heading, by striking "SERVICES" and inserting "SERVICES AND RURAL EMERGENCY ACCESS CARE HOSPITAL SERVICES"; and

(ii) by adding at the end the following new sentence: "The amount of payment for rural emergency access care hospital services provided during a year shall be determined using the applicable method provided under this subsection for determining payment for out-

patient rural primary care hospital services during the year.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal years beginning on or after October 1, 1995.

SEC. 8704. CLASSIFICATION OF RURAL REFERRAL CENTERS.

(a) PROHIBITING DENIAL OF REQUEST FOR RECLASSIFICATION ON BASIS OF COMPARABILITY OF WAGES.—

(1) IN GENERAL.—Section 1886(d)(10)(D) (42 U.S.C. 1395ww(d)(10)(D)) is amended—

(A) by redesignating clause (iii) as clause (iv); and

(B) by inserting after clause (ii) the following new clause:

''(iii) Under the guidelines published by the Secretary under clause (i), in the case of a hospital which is classified by the Secretary as a rural referral center under paragraph (5)(C), the Board may not reject the application of the hospital under this paragraph on the basis of any comparison between the average hourly wage of the hospital and the average hourly wage of hospitals in the area in which it is located.''.

(2) EFFECTIVE DATE.—Notwithstanding section 1886(d)(10)(C)(ii) of the Social Security Act, a hospital may submit an application to the Medicare Geographic Classification Review Board during the 30-day period beginning on the date of the enactment of this Act requesting a change in its classification for purposes of determining the area wage index applicable to the hospital under section 1886(d)(3)(D) of such Act for fiscal year 1997, if the hospital would be eligible for such a change in its classification under the standards described in section 1886(d)(10)(D) (as amended by paragraph (1)) but for its failure to meet the deadline for applications under section 1886(d)(10)(C)(ii).

(b) CONTINUING TREATMENT OF PREVIOUSLY DESIGNATED CENTERS.—Any hospital classified as a rural referral center by the Secretary of Health and Human Services under section 1886(d)(5)(C) of the Social Security Act for fiscal year 1994 shall be classified as such a rural referral center for fiscal year 1996 and each subsequent fiscal year.

SEC. 8705. FLOOR ON AREA WAGE INDEX.

(a) IN GENERAL.—For purposes of section 1886(d)(3)(E) of the Social Security Act for discharges occurring on or after October 1, 1995, the area wage index applicable under such section to any hospital which is not located in a rural area (as defined in section 1886(d)(2)(D) of such Act) may not be less than the average of the area wage indices applicable under such section to hospitals located in rural areas in the State in which the hospital is located.

(b) IMPLEMENTATION.—The Secretary of Health and Human Services shall adjust the area wage indices referred to in subsection (a) for hospitals not described in such subsection in a manner which assures that the aggregate payments made under section 1886(d) of the Social Security Act in a fiscal year for the operating costs of inpatient hospital services are not greater or less than those which would have been made in the year if this section did not apply.

SEC. 8706. ADDITIONAL PAYMENTS FOR PHYSICIANS' SERVICES FURNISHED IN SHORTAGE AREAS.

(a) INCREASE IN AMOUNT OF ADDITIONAL PAYMENT.—Section 1833(m) (42 U.S.C. 1395l(m)) is amended by striking "10 percent" and inserting "20 percent".

(b) RESTRICTION TO PRIMARY CARE SERVICES.—Section 1833(m) (42 U.S.C. 1395l(m)) is amended by inserting after "physicians' services" the following: "consisting of primary care services (as defined in section 1842(i)(4))".

(c) EXTENSION OF PAYMENT FOR FORMER SHORTAGE AREAS.—

(1) IN GENERAL.—Section 1833(m) (42 U.S.C. 1395l(m)) is amended by striking "area," and inserting "area (or, in the case of an area for which the designation as a health professional shortage area under such section is withdrawn, in the case of physicians' services furnished to such an individual during the 3-year period beginning on the effective date of the withdrawal of such designation),".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to physicians' services furnished in an area for which the designation as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act is withdrawn on or after January 1, 1996.

(d) REQUIRING CARRIERS TO REPORT ON SERVICES PROVIDED.—Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

(1) by striking "and" at the end of subparagraph (I); and

(2) by inserting after subparagraph (I) the following new subparagraph:

"(J) will provide information to the Secretary (on such periodic basis as the Secretary may require) on the types of providers to whom the carrier makes additional payments for certain physicians' services pursuant to section 1833(m), together with a description of the services furnished by such providers; and".

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (d) shall apply to physicians' services furnished on or after October 1, 1995.

SEC. 8707. PAYMENTS TO PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS FOR SERVICES FURNISHED IN OUTPATIENT OR HOME SETTINGS.

(a) COVERAGE IN OUTPATIENT OR HOME SETTINGS FOR PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS.—Section 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) is amended—

(1) in clause (i)—

(A) by striking "or" at the end of subclause (II); and

(B) by inserting "or (IV) in an outpatient or home setting as defined by the Secretary" following "shortage area,"; and

(2) in clause (ii)—

(A) by striking "in a skilled" and inserting "in (I) a skilled"; and

(B) by inserting ", or (II) in an outpatient or home setting (as defined by the Secretary)," after "(as defined in section 1919(a))".

(b) PAYMENTS TO PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS IN OUTPATIENT OR HOME SETTINGS.—

(1) IN GENERAL.—Section 1833(r)(1) (42 U.S.C. 1395l(r)(1)) is amended—

(A) by inserting "services described in section 1861(s)(2)(K)(ii)(II) (relating to nurse practitioner services furnished in outpatient or home settings), and services described in section 1861(s)(2)(K)(i)(IV) (relating to physician assistant services furnished in an outpatient or home setting" after "rural area),"; and

(B) by striking "or clinical nurse specialist" and inserting "clinical nurse specialist, or physician assistant".

(2) CONFORMING AMENDMENT.—Section 1842(b)(6)(C) (42 U.S.C. 1395u(b)(6)(C)) is amended by striking "clauses (i), (ii), or (iv)" and inserting "subclauses (I), (II), or (III) of clause (i), clause (ii)(I), or clause (iv)".

(c) PAYMENT UNDER THE FEE SCHEDULE TO PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS IN OUTPATIENT OR HOME SETTINGS.—

(1) PHYSICIAN ASSISTANTS.—Section 1842(b)(12) (42 U.S.C. 1395u(b)(12)) is amended by adding at the end the following new subparagraph:

"(C) With respect to services described in clauses (i)(IV), (ii)(II), and (iv) of section 1861(s)(2)(K) (relating to physician assistants and nurse practitioners furnishing services in outpatient or home settings)—

"(i) payment under this part may only be made on an assignment-related basis; and

"(ii) the amounts paid under this part shall be equal to 80 percent of (I) the lesser of the actual charge or 85 percent of the fee schedule amount provided under section 1848 for the same service provided by a physician who is not a specialist; or (II) in the case of services as an assistant at surgery, the lesser of the actual charge or 85 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery.".

(2) CONFORMING AMENDMENT.—Section 1842(b)(12)(A) (42 U.S.C. 1395u(b)(12)(A)) is amended in the matter preceding clause (i) by striking "(i), (ii)," and inserting "subclauses (I), (II), or (III) of clause (i), or subclause (I) of clause (ii)".

(3) TECHNICAL AMENDMENT.—Section 1842(b)(12)(A) (42 U.S.C. 1395u(b)(12)(A)) is amended in the matter preceding clause (i) by striking "a physician assistants" and inserting "physician assistants".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after October 1, 1995.

SEC. 8708. EXPANDING ACCESS TO NURSE AIDE TRAINING IN UNDERSERVED AREAS.

(a) IN GENERAL.—Section 1819(f)(2)(B)(iii)(I) (42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended in the matter preceding item (a), by striking "by or in a nursing facility" and inserting "by a nursing facility (or in such a facility, unless the State determines that there is no other such program offered within a reasonable distance, provides notice of the approval to the State long term care ombudsman, and assures, through an oversight effort, that an adequate environment exists for such a program)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to nurse aide training and competency evaluation programs under section 1819 of the Social Security Act which are offered on or after October 1, 1995.

TITLE IX—TRANSPORTATION AND RELATED PROVISIONS

SEC. 9001. MINIMUM ALLOCATION FOR HIGHWAY PROGRAMS.

(a) TECHNICAL CORRECTION.—With respect to fiscal year 1996—

(1) the Secretary of Transportation shall determine, in accordance with the policies established by the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1914)—

(A) which of the States will no longer require an apportionment under section 157(a)(4) of title 23, United States Code; and

(B) which of the States will require decreased funding under such section 157(a)(4);

as a result of the termination of the Interstate construction program; and

(2) as a result of the reduced number of States that may require an apportionment under such section 157(a)(4), and the decrease in the amount of funds some States will require under such section 157(a)(4), the maximum amount available for apportionment under such section 157(a)(4) shall be reduced from the amount apportioned under such section 157(a)(4) for fiscal year 1995 by 60.4 percent.

(b) EFFECT ON CERTAIN CALCULATIONS.—The correction made by subsection (a) shall be made after the reduction required under section 1003(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1921) and shall not be taken into account in making the calculations under sections 1003(c), 1013(c), and 1015 of such Act (105 Stat. 1921, 1940, and 1943).

SEC. 9002. EXTENSION OF HIGHER VESSEL TONNAGE DUTIES.

(a) EXTENSION OF DUTIES.—Section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended by striking "for fiscal years 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998," each place it appears and inserting "for fiscal years through fiscal year 2002,".

(b) CONFORMING AMENDMENT.—The Act entitled "An Act concerning tonnage duties on vessels entering otherwise than by sea", approved March 8, 1910 (36 Stat. 234; 46 U.S.C. App. 132), is amended by striking "for fiscal years 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998," and inserting "for fiscal years through fiscal year 2002,".

SEC. 9003. FEMA RADIOLOGICAL EMERGENCY PREPAREDNESS FEES.

(a) IN GENERAL.—The Director of the Federal Emergency Management Agency may assess and collect fees applicable to persons subject to radiological emergency preparedness regulations issued by the Director.

(b) REQUIREMENTS.—The assessment and collection of fees by the Director under subsection (a) shall be fair and equitable and

shall reflect the full amount of costs to the Agency of providing radiological emergency planning, preparedness, response, and associated services. Such fees shall be assessed by the Director in a manner that reflects the use of resources of the Agency for classes of regulated persons and the administrative costs of collecting such fees.

(c) AMOUNT OF FEES.—The aggregate amount of fees assessed under subsection (a) in a fiscal year shall approximate, but not be less than, 100 percent of the amounts anticipated by the Director to be obligated for the radiological emergency preparedness program of the Agency for such fiscal year.

(d) DEPOSIT OF FEES IN TREASURY.—Fees received pursuant to subsection (a) shall be deposited in the general fund of the Treasury as offsetting receipts.

(e) EXPIRATION OF AUTHORITY.—The authority of the Director to assess and collect fees under subsection (a) shall expire on September 30, 2002.

TITLE X—VETERANS AND RELATED PROVISIONS

SEC. 10001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Veterans Reconciliation Act of 1995".

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

Subtitle A—Extension of Temporary Authorities

SEC. 10011. AUTHORITY TO REQUIRE THAT CERTAIN VETERANS MAKE COPAYMENTS IN EXCHANGE FOR RECEIVING HEALTH-CARE BENEFITS.

(a) HOSPITAL AND MEDICAL CARE.—Section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 (38 U.S.C. 1710 note) is

amended by striking out "September 30, 1998" and inserting in lieu thereof "September 30, 2002".

(b) OUTPATIENT MEDICATIONS.—Section 1722A(c) of title 38, United States Code, is amended by striking out "September 30, 1998" and inserting in lieu thereof "September 30, 2002".

SEC. 10012. MEDICAL CARE COST RECOVERY AUTHORITY.

Section 1729(a)(2)(E) of title 38, United States Code, is amended by striking out "before October 1, 1998," and inserting "before October 1, 2002,".

SEC. 10013. INCOME VERIFICATION AUTHORITY.

Section 5317(g) of title 38, United States Code, is amended by striking out "September 30, 1998" and inserting in lieu thereof "September 30, 2002".

SEC. 10014. LIMITATION ON PENSION FOR CERTAIN RECIPIENTS OF MEDICAID-COVERED NURSING HOME CARE.

Section 5503(f)(7) of title 38, United States Code, is amended by striking out "September 30, 1998" and inserting in lieu thereof "September 30, 2002".

SEC. 10015. HOME LOAN FEES.

Section 3729(a) of title 38, United States Code, is amended—

(1) in paragraph (4), by striking out "October 1, 1998" and inserting in lieu thereof "October 1, 2002"; and

(2) in paragraph (5)(C), by striking out "October 1, 1998" and inserting in lieu thereof "October 1, 2002".

SEC. 10016. PROCEDURES APPLICABLE TO LIQUIDATION SALES ON DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.

Section 3732(c)(11) of title 38, United States Code, is amended by striking out "October 1, 1998" and inserting "October 1, 2002".

SEC. 10017. ENHANCED LOAN ASSET SALE AUTHORITY.

Section 3720(h)(2) of title 38, United States Code, is amended by striking out "December 31, 1995" and inserting in lieu thereof "September 30, 2002".

Subtitle B—Other Matters

SEC. 10021. REVISION TO PRESCRIPTION DRUG COPAYMENT.

(a) INCREASE IN AMOUNT OF COPAYMENT.—Section 1722A(a) of title 38, United States Code, is amended—

(1) in paragraph (1), by striking out "$2" and inserting in lieu thereof "$4";

(2) by striking out paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2) and in that paragraph—

(A) striking out "or" at the end of subparagraph (A);

(B) striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; or"; and

(C) adding at the end the following new subparagraph: "(C) to a veteran who is a former prisoner of war.".

(b) RECOVERY OF INDEBTEDNESS.—(1) Section 5302 of such title is amended by adding at the end the following new subsection:

"(f) The Secretary may not waive under this section the recovery of any payment or the collection of any indebtedness owed under section 1722A of this title.".

(2) The amendment made by paragraph (1) shall apply with respect to amounts that become due to the United States under section 1722A of title 38, United States Code, on or after the date of the enactment of this Act.

SEC. 10022. ROUNDING DOWN OF COST-OF-LIVING ADJUSTMENTS IN COMPENSATION AND DIC RATES.

(a) FISCAL YEAR 1996 COLA.—(1) Effective as of December 1, 1995, the Secretary of Veterans Affairs shall recompute any increase in an adjustment that is otherwise provided by law to be effective during fiscal year 1996 in the rates of disability compensation and dependency and indemnity compensation paid by the Secretary as such rates were in effect on November 30, 1995. The recomputation shall provide for the same percentage increase as provided under such law, but with amounts so recomputed (if not a whole dollar amount) rounded down to the next lower whole dollar amount (rather than to the nearest whole dollar amount) and with each old-law DIC rate increased by the amount by which the new-law DIC rate is increased (rather than by a uniform percentage).

(2) For purposes of paragraph (1):

(A) The term "old-law DIC rate" means a dollar amount in effect under section 1311(a)(3) of title 38, United States Code.

(B) The term "new-law DIC rate" means the dollar amount in effect under section 1311(a)(1) of title 38, United States Code.

(b) OUT-YEAR COMPENSATION COLAS.—(1) Chapter 11 of title 38, United States Code, is amended by inserting after section 1102 the following new section:

"§ 1103. Cost-of-living adjustments

"(a) In the computation of cost-of-living adjustments for fiscal years 1997 through 2002 in the rates of, and dollar limitations applicable to, compensation payable under this chapter, such adjustments shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates and limitations (other than increased rates or limitations equal to a whole dollar amount) rounded down to the next lower whole dollar amount.

"(b) For purposes of this section, the term 'social security increase' means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1102 the following new item:

"1103. Cost-of-living adjustments.".

(c) OUT-YEAR DIC COLAS.—(1) Chapter 13 of title 38, United States Code, is amended by inserting after section 1302 the following new section:

"§ 1303. Cost-of-living adjustments

"(a) In the computation of cost-of-living adjustments for fiscal years 1997 through 2002 in the rates of dependency and indemnity compensation payable under this chapter, such adjustments (except as provided in subsection (b)) shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates (other than increased rates equal to a whole dollar amount) rounded down to the next lower whole dollar amount.

"(b)(1) Cost-of-living adjustments for each of fiscal years 1997 through 2002 in old-law DIC rates shall be in a whole dollar amount that is no greater than the amount by which the new-law DIC rate is increased for that fiscal year as determined under subsection (a).

"(2) For purposes of paragraph (1):

"(A) The term 'old-law DIC rates' means the dollar amounts in effect under section 1311(a)(3) of this title.

"(B) The term 'new-law DIC rate' means the dollar amount in effect under section 1311(a)(1) of this title.

"(c) For purposes of this section, the term 'social security increase' means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1302 the following new item:

"1303. Cost-of-living adjustments.".

SEC. 10023. REVISED STANDARD FOR LIABILITY FOR INJURIES RESULTING FROM DEPARTMENT OF VETERANS AFFAIRS TREATMENT.

(a) REVISED STANDARD.—Section 1151 of title 38, United States Code, is amended—

(1) by designating the second sentence as subsection (c);

(2) by striking out the first sentence and inserting in lieu thereof the following:

"(a) Compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded for a qualifying additional disability of a veteran or the qualifying death of a veteran in the same manner as if such disability or death were service-connected.

"(b)(1) For purposes of this section, a disability or death is a qualifying additional disability or a qualifying death only if the disability or death—

"(A) was caused by Department health care and was a proximate result of—

"(i) negligence on the part of the Department in furnishing the Department health care; or

"(ii) an event not reasonably foreseeable; or

"(B) was incurred as a proximate result of the provision of training and rehabilitation services by the Secretary (including by a service-provider used by the Secretary for such purpose

under section 3115 of this title) as part of an approved rehabilitation program under chapter 31 of this title.

"(2) For purposes of this section, the term 'Department health care' means hospital care, medical or surgical treatment, or an examination that is furnished under any law administered by the Secretary to a veteran by a Department employee or in a facility over which the Secretary has direct jurisdiction.

"(3) A disability or death of a veteran which is the result of the veteran's willful misconduct is not a qualifying disability or death for purposes of this section."; and

(3) by adding at the end the following:

"(d) Effective with respect to injuries, aggravations of injuries, and deaths occurring after September 30, 2002, a disability or death is a qualifying additional disability or a qualifying death for purposes of this section (notwithstanding the provisions of subsection (b)(1)) if the disability or death—

"(1) was the result of Department health care; or

"(2) was the result of the pursuit of a course of vocational rehabilitation under chapter 31 of this title.".

(b) CONFORMING AMENDMENTS.—Subsection (c) of such section, as designated by subsection (a)(1), is amended—

(1) by striking out ", aggravation," both places it appears; and

(2) by striking out "sentence" and inserting in lieu thereof "subsection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any administrative or judicial determination of eligibility for benefits under section 1151 of title 38, United States Code, based on a claim that is received by the Secretary on or after October 1, 1995, including any such determination based on an original application or an application seeking to reopen, revise, reconsider, or otherwise readjudicate any claim for benefits under section 1151 of that title or any predecessor provision of law.

SEC. 10024. WITHHOLDING OF PAYMENTS AND BENEFITS.

(a) NOTICE REQUIRED IN LIEU OF CONSENT OR COURT ORDER.—Section 3726 of title 38, United States Code, is amended by striking out "unless" and all that follows and inserting in lieu thereof the following: "unless the Secretary provides such veteran or surviving spouse with notice by certified mail with return receipt requested of the authority of the Secretary to waive the payment of indebtedness under section 5302(b) of this title. If the Secretary does not waive the entire amount of the liability, the Secretary shall then determine whether the veteran or surviving spouse should be released from liability under section 3713(b) of this title. If the Secretary determines that the veteran or surviving spouse should not be released from liability, the Secretary shall notify the veteran or surviving spouse of that determination and provide a notice of the procedure for appealing that determination, unless the Secretary has previously made such determination and notified the veteran or surviving spouse of the procedure for appealing the determination.".

(b) CONFORMING AMENDMENT.—Section 5302(b) of such title is amended by inserting "with return receipt requested" after "certified mail".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any indebtedness to the United States arising pursuant to chapter 37 of title 38, United States Code, before, on, or after the date of the enactment of this Act.

TITLE XI—REVENUE PROVISIONS

SEC. 11000. SHORT TITLES; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) REVENUE RECONCILIATION ACT.—This title may be cited as the "Revenue Reconciliation Act of 1995".

(b) CONTRACT WITH AMERICA.—Subtitles A, B, C, and D of this title may be cited as the "Contract With America Tax Relief Act of 1995".

(c) 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.

(d) TABLE OF CONTENTS.—The table of contents for this title is as follows:

CHAPTER 9—OTHER PROVISIONS

SUBCHAPTER F—OTHER PROVISIONS

CHAPTER 6—ESTATES AND TRUSTS

SUBCHAPTER A—INCOME TAX PROVISIONS

SUBCHAPTER B—ESTATE AND GIFT TAX PROVISIONS

SUBCHAPTER C—GENERATION-SKIPPING TAX PROVISIONS

CHAPTER 7—EXCISE TAX SIMPLIFICATION

SUBCHAPTER A—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

SUBCHAPTER B—CONSOLIDATION OF TAXES ON AVIATION GASOLINE

SUBCHAPTER C—OTHER EXCISE TAX PROVISIONS

CHAPTER 8—ADMINISTRATIVE PROVISION

Subtitle K—Miscellaneous Provisions

Subtitle L—Generalized System of Preferences

Subtitle A—Family Tax Relief

SEC. 11001. CHILD TAX CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 22 the following new section:

"SEC. 23. CHILD TAX CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to $500 multiplied by the number of qualifying children of the taxpayer.

"(b) LIMITATION.—

"(1) IN GENERAL.—The amount of the credit which would (but for this subsection) be allowed by subsection (a) shall be reduced (but not below zero) by $25 for each $1,000 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds the threshold amount.

"(2) THRESHOLD AMOUNT.—For purposes of paragraph (1), the term 'threshold amount' means—

"(A) $110,000 in the case of a joint return,

"(B) $75,000 in the case of an individual who is not married, and

"(C) $55,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

"(c) QUALIFYING CHILD.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying child' means any individual if—

"(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for such taxable year,

"(B) such individual has not attained the age of 18 as of the close of the calendar year in which the taxable year of the taxpayer begins, and

"(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B) (determined without regard to clause (ii) thereof).

"(2) EXCEPTION FOR CERTAIN NONCITIZENS.—The term 'qualifying child' shall not include any individual who would not be a dependent if the first sentence of section 152(b)(3) were applied without regard to all that follows 'resident of the United States'.

"(d) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.".

(b) NOTICE OF CREDIT.—The Secretary of the Treasury shall transmit to all individual taxpayers by a separate mailing made on

or before February 1, 1996, a notice which states only the following: "The Balanced Budget Act of 1995 was recently passed by the Congress. The Act's child tax credit allows taxpayers to reduce their taxes by $500 per child. The credit is effective October 1, 1995. You may wish to check with your employer about changing your tax withholding to take immediate advantage of the credit to which you are entitled for the current tax year. In addition, the Internal Revenue Service will be sending you a form in June of this year which you may use to claim the credit to which you are entitled for the period from October 1 through December 31, 1995 ($125 per child for 1995). In order to obtain your 1995 credit, you should file this form by August 15, 1996. Your refund will be sent to you sometime after October 1, 1996."

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 22 the following new item:

"Sec. 23. Child tax credit.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

(e) PAYMENT OF 1995 CHILD CREDIT AMOUNT.—

(1) IN GENERAL.—The Secretary shall take such actions as are necessary to ensure that the 1995 child credit amount is paid to taxpayers entitled to payment of such credit amount.

(2) PAYMENTS GENERALLY DURING OCTOBER 1996.—In the case of taxpayers submitting the form referred to in paragraph (4) before August 16, 1996, the Secretary shall take such actions as are necessary to ensure that payments required by paragraph (1) are mailed after September 30, 1996, and before October 16, 1996.

(3) 1995 CHILD CREDIT AMOUNT.—For purposes of paragraph (1), the 1995 child credit amount is an amount equal to 25 percent of the amount of the credit which would be allowed to the taxpayer under section 23 of the Internal Revenue Code of 1986 (as added by this section) if such section were in effect for the taxpayer's taxable year beginning in 1995.

(4) ENTITLEMENT TO CREDIT.—A taxpayer shall be entitled to a 1995 child credit amount if (and only if) the taxpayer submits to the Secretary a form which the Secretary shall prescribe for purposes of determining such amount. The Secretary shall mail such form to taxpayers on or before June 1, 1996.

(5) PAYMENT TREATED AS OVERPAYMENT.—The 1995 child credit amount shall be treated for purposes of subtitle F of such Code as a payment of tax for the taxpayer's taxable year beginning in 1995 which was made on August 15, 1996, or, if later, the date the form referred to in paragraph (4) is filed, and shall be refunded or credited in the same manner as if it were an overpayment of tax for such taxable year. No interest shall be paid under section 6611 of such Code on amounts paid under paragraph (1) before October 16, 1996.

(6) SECRETARY.—For purposes of this subsection, the term "Secretary" means the Secretary of the Treasury or his delegate.

SEC. 11002. REDUCTION IN MARRIAGE PENALTY.

(a) INCREASE IN BASIC STANDARD DEDUCTION FOR MARRIED INDIVIDUALS.—Section 63(c) (relating to standard deduction) is amended—

(1) by striking "$5,000" in paragraph (2)(A) and inserting "the applicable dollar amount",

(2) by striking "$2,500" in paragraph (2)(D) and inserting "½ of the applicable dollar amount", and

(3) by inserting after paragraph (6) the following new paragraph:

"(7) APPLICABLE DOLLAR AMOUNT.—For purposes of paragraph (2), the applicable dollar amount for any taxable year shall be the product of the dollar amount in effect under paragraph (2)(C) for such year multiplied by the applicable factor determined under the following table:

"For taxable years beginning in calendar year—	***The applicable factor is—***
1996	*1.68*
1997	*1.71*
1998	*1.72*
1999	*1.73*
2000	*1.75*
2001	*1.77*
2002	*1.78*
2003	*1.88*
2004	*1.91*
2005 and thereafter	*2.00.*

If the amount determined under the preceding sentence is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11003. CREDIT FOR ADOPTION EXPENSES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by section 11001, is amended by inserting after section 23 the following new section:

"SEC. 24. ADOPTION EXPENSES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the amount of the qualified adoption expenses paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) with respect to the adoption of a child shall not exceed $5,000.

"(2) INCOME LIMITATION.—The amount allowable as a credit under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as—

"(A) the amount (if any) by which the taxpayer's adjusted gross income (determined without regard to sections 911, 931, and 933) exceeds $75,000, bears to

"(B) $40,000.

"(3) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowable under any other provision of this chapter.

"(B) GRANTS.—No credit shall be allowed under subsection (a) for any expense to the extent that funds for such expense are received under any Federal, State, or local program. The preceding sentence shall not apply to expenses for the adoption of a child with special needs.

"(C) REIMBURSEMENT.—No credit shall be allowed under subsection (a) for any expense to the extent that such expense is reimbursed and the reimbursement is excluded from gross income under section 138.

"(c) CARRYFORWARDS OF UNUSED CREDIT.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED ADOPTION EXPENSES.—The term 'qualified adoption expenses' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses—

"(A) which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child by the taxpayer, and

"(B) which are not incurred in violation of State or Federal law or in carrying out any surrogate parenting arrangement.

Such term shall not include expenses for a foreign adoption unless the child is actually adopted.

"(2) EXPENSES FOR ADOPTION OF SPOUSE'S CHILD NOT ELIGIBLE.—The term 'qualified adoption expenses' shall not include any expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse.

"(3) ELIGIBLE CHILD.—The term 'eligible child' means any individual—

"(A) who has not attained age 18 as of the time of the adoption, or

"(B) who is physically or mentally incapable of caring for himself.

"(4) CHILD WITH SPECIAL NEEDS.—The term 'child with special needs' means any child if—

"(A) a State has determined that the child cannot or should not be returned to the home of his parents, and

"(B) such State has determined that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or

sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance.

"(e) MARRIED COUPLES MUST FILE JOINT RETURNS.—Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section.".

(b) EXCLUSION OF AMOUNTS RECEIVED UNDER EMPLOYER'S ADOPTION ASSISTANCE PROGRAMS.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income), as amended by title VIII, is amended by redesignating section 138 as section 139 and by inserting after section 137 the following new section:

"SEC. 138. ADOPTION ASSISTANCE PROGRAMS.

"(a) IN GENERAL.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The aggregate amount excludable from gross income under subsection (a) for all taxable years with respect to the adoption of any single child by the taxpayer shall not exceed $5,000.

"(2) INCOME LIMITATION.—The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as—

"(A) the amount (if any) by which the taxpayer's adjusted gross income (determined without regard to this section and sections 911, 931, and 933) exceeds $75,000, bears to

"(B) $40,000.

"(c) ADOPTION ASSISTANCE PROGRAM.—For purposes of this section, an adoption assistance program is a plan of an employer—

"(1) under which the employer provides employees with adoption assistance, and

"(2) which meets requirements similar to the requirements of paragraphs (2), (3), and (5) of section 127(b).

An adoption reimbursement program operated under section 1052 of title 10, United States Code (relating to armed forces) or section 514 of title 14, United States Code (relating to members of the Coast Guard) shall be treated as an adoption assistance program for purposes of this section.

"(d) QUALIFIED ADOPTION EXPENSES.—For purposes of this section, the term 'qualified adoption expenses' has the meaning given such term by section 24(d).".

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by section 11001, is amend-

ed by inserting after the item relating to section 23 the following new item:

"Sec. 24. Adoption expenses.".

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 138 and inserting the following:

"Sec. 138. Adoption assistance programs.
"Sec. 139. Cross reference to other Acts.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11004. DEDUCTION FOR INTEREST ON EDUCATION LOANS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. INTEREST ON EDUCATION LOANS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

"(b) MAXIMUM DEDUCTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable year shall not exceed $2,500.

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $45,000 ($65,000 in the case of a joint return), the amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so allowable as such excess bears to $20,000.

"(B) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income determined—

"(i) without regard to this section and sections 135, 911, 931, and 933, and

"(ii) after application of sections 86, 219, and 469.

For purposes of sections 86, 135, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

"(C) INFLATION ADJUSTMENT.—In the case of any taxable year beginning after 1996, the $45,000 and $65,000 amounts referred to in subparagraph (A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section (1)(f)(3) for the calendar year in which the taxable year begins, by substituting '1995' for '1992'.

"(D) ROUNDING.—If any amount as adjusted under subparagraph (C) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

"(c) DEPENDENTS NOT ELIGIBLE FOR DEDUCTION.—No deduction shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

"(d) LIMIT ON PERIOD DEDUCTION ALLOWED.—A deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

"(e) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EDUCATION LOAN.—The term 'qualified education loan' means any indebtedness incurred to pay qualified higher education expenses—

"(A) which are incurred on behalf of the taxpayer or the taxpayer's spouse,

"(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

"(C) which are attributable to education furnished during a period during which the recipient was at least a half-time student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term 'qualified education loan' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

"(2) QUALIFIED HIGHER EDUCATION EXPENSES.—The term 'qualified higher education expenses' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of this Act) of the taxpayer or the taxpayer's spouse at an eligible educational institution, reduced by the sum of—

"(A) the amount excluded from gross income under section 135 by reason of such expenses, and

"(B) the amount of the reduction described in section 135(d)(1).

For purposes of the preceding sentence, the term 'eligible educational institution' has the same meaning given such term by section 135(c)(3), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

"(3) HALF-TIME STUDENT.—The term 'half-time student' means any individual who would be a student as defined in section 151(c)(4) if 'half-time' were substituted for 'full-time' each place it appears in such section.

"(4) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152.

"(f) SPECIAL RULES.—

"(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

"(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

"(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.".

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (15) the following new paragraph:

"(16) INTEREST ON EDUCATION LOANS.—The deduction allowed by section 220."

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by inserting after section 6050P the following new section:

"SEC. 6050Q. RETURNS RELATING TO EDUCATION LOAN INTEREST RECEIVED IN TRADE OR BUSINESS FROM INDIVIDUALS.

"(a) EDUCATION LOAN INTEREST OF $600 OR MORE.—Any person—

"(1) who is engaged in a trade or business, and

"(2) who, in the course of such trade or business, receives from any individual interest aggregating $600 or more for any calendar year on 1 or more qualified education loans,

shall make the return described in subsection (b) with respect to each individual from whom such interest was received at such time as the Secretary may by regulations prescribe.

"(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name, address, and TIN of the individual from whom the interest described in subsection (a)(2) was received,

"(B) the amount of such interest received for the calendar year, and

"(C) such other information as the Secretary may prescribe.

"(c) APPLICATION TO GOVERNMENTAL UNITS.—For purposes of subsection (a)—

"(1) TREATED AS PERSONS.—The term 'person' includes any governmental unit (and any agency or instrumentality thereof).

"(2) SPECIAL RULES.—In the case of a governmental unit or any agency or instrumentality thereof—

"(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

"(B) any return required under subsection (a) shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of interest described in subsection (a)(2) received by the person required to make such return from the individual to whom the statement is required to be furnished.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

"(e) QUALIFIED EDUCATION LOAN DEFINED.—For purposes of this section, except as provided in regulations prescribed by the Secretary, the term 'qualified education loan' has the meaning given such term by section 220(e)(1).

"(f) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of interest received by any person on behalf of another person, only the person first receiving such interest shall be required to make the return under subsection (a).".

(2) ASSESSABLE PENALTIES.—Section 6724(d) (relating to definitions) is amended—

(A) by redesignating clauses (ix) through (xiv) as clauses (x) through (xv), respectively, in paragraph (1)(B) and by inserting after clause (viii) of such paragraph the following new clause:

"(ix) section 6050Q (relating to returns relating to education loan interest received in trade or business from individuals),", and

(B) by redesignating subparagraphs (Q) through (T) as subparagraphs (R) through (U), respectively, in paragraph (2) and by inserting after subparagraph (P) of such paragraph the following new subparagraph:

"(Q) section 6050Q (relating to returns relating to education loan interest received in trade or business from individuals),".

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

"Sec. 220. Interest on education loans.
"Sec. 221. Cross reference.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any qualified education loan (as defined in section 220(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this

Act, but only with respect to any loan interest payment due after December 31, 1995.

SEC. 11005. DEDUCTION FOR TAXPAYERS WITH CERTAIN PERSONS REQUIRING CUSTODIAL CARE IN THEIR HOUSEHOLDS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. TAXPAYERS WITH CERTAIN PERSONS REQUIRING CUSTODIAL CARE IN THEIR HOUSEHOLDS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual who maintains a household which includes as a member one or more qualified persons, there shall be allowed as a deduction for the taxable year an amount equal to $1,000 for each such person.

"(b) QUALIFIED PERSON.—For purposes of this section, the term 'qualified person' means any individual—

"(1) who is a father or mother of the taxpayer, his spouse, or his former spouse or who is an ancestor of such a father or mother,

"(2) who is physically or mentally incapable of caring for himself,

"(3) who has as his principal place of abode for more than half of the taxable year the home of the taxpayer,

"(4) over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer, and

"(5) whose name and TIN are included on the taxpayer's return for the taxable year.

For purposes of paragraph (1), a stepfather or stepmother shall be treated as a father or mother.

"(c) SPECIAL RULES.—For purposes of this section, rules similar to the rules of paragraphs (1), (2), (3), and (4) of section 21(e) shall apply."

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (16) the following new paragraph:

"(17) TAXPAYERS WITH CERTAIN PERSONS REQUIRING CUSTODIAL CARE IN THEIR HOUSEHOLDS.—The deduction allowed by section 221."

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

"Sec. 221. Taxpayers with certain persons requiring custodial care in their households.
"Sec. 222. Cross reference."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Subtitle B—Savings and Investment Incentives

CHAPTER 1—RETIREMENT SAVINGS INCENTIVES

Subchapter A—Individual Retirement Plans

PART I—RESTORATION OF IRA DEDUCTION

SEC. 11011. RESTORATION OF IRA DEDUCTION.

(a) INCREASE IN INCOME LIMITS FOR ACTIVE PARTICIPANTS.—

(1) IN GENERAL.—Subparagraph (B) of section 219(g)(3) (relating to applicable dollar amount) is amended to read as follows:

"(B) APPLICABLE DOLLAR AMOUNT.—The term 'applicable dollar amount' means the following:

"(i) In the case of a taxpayer filing a joint return:

"For taxable years beginning in:	***The applicable dollar amount is:***
1996	*$45,000*
1997	*$50,000*
1998	*$55,000*
1999	*$60,000*
2000	*$65,000*
2001	*$70,000*
2002	*$75,000*
2003	*$80,000*
2004	*$85,000*
2005	*$90,000*
2006	*$95,000*
2007 and thereafter	*$100,000.*

"(ii) In the case of any other taxpayer (other than a married individual filing a separate return):

"For taxable years beginning in:	***The applicable dollar amount is:***
1996	*$30,000*
1997	*$35,000*
1998	*$40,000*
1999	*$45,000*
2000	*$50,000*
2001	*$55,000*
2002	*$60,000*
2003	*$65,000*
2004	*$70,000*
2005	*$75,000*
2006	*$80,000*
2007 and thereafter	*$85,000.*

"(iii) In the case of a married individual filing a separate return, zero."

(2) INCREASE IN PHASEOUT RANGE FOR JOINT RETURNS.—

(A) IN GENERAL.—Clause (ii) of section 219(g)(2)(A) is amended by inserting "(the phaseout amount in the case of a joint return)" after "$10,000".

(B) PHASEOUT AMOUNT.—Paragraph (3) of section 219(g) is amended—

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

"(C) PHASEOUT AMOUNT.—The phaseout amount is:

"For taxable years beginning in:	***The applicable dollar amount is:***
1996	*$12,500*
1997	*$15,000*
1998	*$17,500*
1999 and thereafter	*$20,000.",*

and

(ii) by inserting "; PHASEOUT AMOUNT" after "AMOUNT" in the heading.

(3) COST-OF-LIVING ADJUSTMENTS.—Section 219(h), as added by section 11012(a), is amended—

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

"(2) PHASE-OUT RANGES.—In the case of any taxable year beginning in a calendar year after 2007, the $100,000 and $85,000 amounts in clauses (i) and (ii) of subsection (g)(3)(B) shall each be increased by an amount equal to the product of such dollar amount and the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, except that subparagraph (B) thereof shall be applied by substituting '2006' for '1992'. If any amount to which either such amount is increased is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.", and

(B) by striking "In the case" and inserting:

"(1) DEDUCTIBLE AMOUNT.—In the case".

(b) INDIVIDUAL NOT DISQUALIFIED BY SPOUSE'S PARTICIPATION.—Paragraph (1) of section 219(g) (relating to limitation on deduction for active participants in certain pension plans) is amended by striking "or the individual's spouse".

(c) REPORTING REQUIREMENTS.—Section 408(i) is amended by striking "under regulations" and "in such regulations" each place such terms appear.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11012. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT.

(a) IN GENERAL.—Section 219 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) COST-OF-LIVING ADJUSTMENTS.—In the case of any taxable year beginning in a calendar year after 1996, the $2,000 amount under subsection (b)(1)(A) shall be increased by an amount equal to the product of $2,000 and the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting '1995' for '1992'. If the amount to which $2,000 would be increased under the preceding sentence is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500."

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(2) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 408(j) is amended by striking "$2,000".

SEC. 11013. HOMEMAKERS ELIGIBLE FOR FULL IRA DEDUCTION.

(a) SPOUSAL IRA COMPUTED ON BASIS OF COMPENSATION OF BOTH SPOUSES.—Subsection (c) of section 219 (relating to special rules for certain married individuals) is amended to read as follows:

"(c) SPECIAL RULES FOR CERTAIN MARRIED INDIVIDUALS.—

"(1) IN GENERAL.—In the case of an individual to whom this paragraph applies for the taxable year, the limitation of paragraph (1) of subsection (b) shall be equal to the lesser of—

"(A) the dollar amount in effect under subsection (b)(1)(A) for the taxable year, or

"(B) the sum of—

"(i) the compensation includible in such individual's gross income for the taxable year, plus

"(ii) the compensation includible in the gross income of such individual's spouse for the taxable year reduced by—

"(I) the amount allowed as a deduction under subsection (a) to such spouse for such taxable year, and

"(II) the amount of any contribution on behalf of such spouse to an AD IRA under section 408A for such taxable year.

"(2) INDIVIDUALS TO WHOM PARAGRAPH (1) APPLIES.—Paragraph (1) shall apply to any individual if—

"(A) such individual files a joint return for the taxable year, and

"(B) the amount of compensation (if any) includible in such individual's gross income for the taxable year is less than the compensation includible in the gross income of such individual's spouse for the taxable year."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 219(f) (relating to other definitions and special rules) is amended by striking "subsections (b) and (c)" and inserting "subsection (b)".

(2) Section 408(d)(5) is amended by striking "$2,250" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 219(g)(1) is amended by striking "(c)(2)" and inserting "(c)(1)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

PART II—NONDEDUCTIBLE TAX-FREE IRAS

SEC. 11015. ESTABLISHMENT OF AMERICAN DREAM IRA.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

"SEC. 408A. AMERICAN DREAM IRA.

"(a) GENERAL RULE.—Except as provided in this section, an American Dream IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) AMERICAN DREAM IRA.—For purposes of this title, the term 'American Dream IRA' or 'AD IRA' means an individual retirement plan (as defined in section 7701(a)(37)) which is designated at the time of the establishment of the plan as an American Dream IRA. Such designation shall be made in such manner as the Secretary may prescribe.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to an AD IRA.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all AD IRAs maintained for the benefit of an individual shall not exceed the excess (if any) of—

"(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year (computed without regard to subsection (g) of such section), over

"(B) the amount so allowed.

"(3) CONTRIBUTIONS PERMITTED AFTER AGE 70½.—Contributions to an AD IRA may be made even after the individual for whom the account is maintained has attained age 70½.

"(4) MANDATORY DISTRIBUTION RULES NOT TO APPLY, ETC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), subsections (a)(6) and (b)(3) of section 408 (relating to required distributions) and section 4974 (relating to excise tax on certain accumulations in qualified retirement plans) shall not apply to any AD IRA.

"(B) POST-DEATH DISTRIBUTIONS.—Rules similar to the rules of section 401(a)(9) (other than subparagraph (A) thereof) shall apply for purposes of this section.

"(5) RULES RELATING TO ROLLOVER CONTRIBUTIONS.—

"(A) IN GENERAL.—No rollover contribution may be made to an AD IRA unless it is a qualified rollover contribution.

"(B) COORDINATION WITH LIMIT.—A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

"(6) TIME WHEN CONTRIBUTIONS MADE.—For purposes of this section, the rule of section 219(f)(3) shall apply.

"(d) DISTRIBUTION RULES.—For purposes of this title—

"(1) GENERAL RULES.—

"(A) EXCLUSIONS FROM GROSS INCOME.—Any qualified distribution from an AD IRA shall not be includible in gross income.

"(B) NONQUALIFIED DISTRIBUTIONS.—In applying section 72 to any distribution from an AD IRA which is not a qualified distribution, such distribution shall be treated as made from contributions to the AD IRA to the extent that such distribution, when added to all previous distributions from the AD IRA, does not exceed the aggregate

amount of contributions to the AD IRA. For purposes of the preceding sentence, all AD IRAs maintained for the benefit of an individual shall be treated as 1 account.

"(C) EXCEPTION FROM PENALTY TAX.—Section 72(t) shall not apply to—

"(i) any qualified distribution from an AD IRA, and

"(ii) any qualified special purpose distribution (whether or not a qualified distribution) from an AD IRA.

"(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' means any payment or distribution—

"(i) made on or after the date on which the individual attains age 59½,

"(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

"(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

"(iv) which is a qualified special purpose distribution.

"(B) DISTRIBUTIONS WITHIN 5 YEARS.—No payment or distribution shall be treated as a qualified distribution if—

"(i) it is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to an AD IRA (or such individual's spouse made a contribution to an AD IRA) established for such individual, or

"(ii) in the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary) to a qualified rollover contribution (or income allocable thereto), it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.

Clause (ii) shall not apply to a qualified rollover contribution from an AD IRA.

"(3) ROLLOVERS.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any distribution which is transferred in a qualified rollover contribution to an AD IRA.

"(B) INCOME INCLUSION FOR ROLLOVERS FROM NON-AD IRAS.—In the case of any qualified rollover contribution from an individual retirement plan (other than an AD IRA) to an AD IRA established for the benefit of the payee or distributee, as the case may be—

"(i) sections 72(t) and 408(d)(3) shall not apply, and

"(ii) in any case where such contribution is made before January 1, 1998, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the 4-taxable year period beginning with the taxable year in which the payment or distribution is made.

"(C) ADDITIONAL REPORTING REQUIREMENTS.—The Secretary shall require that trustees of AD IRAs, trustees of individual retirement plans, or both, whichever is appropriate, shall include such additional information in reports required under section 408(i) as is necessary to ensure that amounts required to be included in gross income under subparagraph (B) are so included.

"(4) QUALIFIED SPECIAL PURPOSE DISTRIBUTION.—For purposes of this section, the term 'qualified special purpose distribution' means any distribution to which subparagraph (B), (D), or (E) of section 72(t)(2) applies.

"(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to an AD IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan to an AD IRA.

"(2) CONVERSIONS.—The conversion of an individual retirement plan to an AD IRA shall be treated as if it were a qualified rollover contribution."

(b) REPEAL OF NONDEDUCTIBLE CONTRIBUTIONS.—

(1) Subsection (f) of section 219 is amended by striking paragraph (7).

(2) Paragraph (5) of section 408(d) is amended by striking the last sentence.

(3) Section 408(o) is amended by adding at the end the following new paragraph:

"(5) TERMINATION.—This subsection shall not apply to any designated nondeductible contribution for any taxable year beginning after December 31, 1995."

(4) Subsection (b) of section 4973 is amended by striking the last sentence.

(c) EXCESS DISTRIBUTIONS TAX NOT TO APPLY.—Subparagraph (B) of section 4980A(e)(1) is amended by inserting "other than an AD IRA (as defined in section 408A(b))" after "retirement plan".

(d) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended to read as follows:

"(b) EXCESS CONTRIBUTIONS.—For purposes of this section—

"(1) IN GENERAL.—In the case of individual retirement accounts or individual retirement annuities, the term 'excess contributions' means the sum of—

"(A) the amount determined under paragraph (2) for the taxable year, plus

"(B) the carryover amount determined under paragraph (3) for the taxable year.

"(2) CURRENT YEAR.—The amount determined under this paragraph for any taxable year is an amount equal to the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than AD IRAs), over

"(ii) the amount allowable as a deduction under section 219 for the taxable year, plus

"(B) the excess (if any) of—

"(i) the amount described in clause (i) (taking into account contributions to AD IRAs) contributed for the taxable year, over

"(ii) the amount allowable as a deduction under section 219 for the taxable year (computed without regard to section 219(g)).

"(3) CARRYOVER AMOUNT.—The carryover amount determined under this paragraph for any taxable year is the amount determined under paragraph (2) for the preceding taxable year, reduced by the sum of—

"(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

"(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

"(C) the excess (if any) of the amount determined under paragraph (2)(B)(ii) over the amount determined under paragraph (2)(B)(i).

"(4) SPECIAL RULES.—For purposes of this subsection—

"(A) ROLLOVER CONTRIBUTIONS.—Rollover distributions described in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 408A(e) shall not be taken into account.

"(B) CONTRIBUTIONS RETURNED BEFORE DUE DATE.—Any contribution which is distributed from an individual retirement plan in a distribution to which section 408(d)(4) applies shall not be taken into account.

"(C) EXCESS CONTRIBUTIONS TREATED AS CONTRIBUTIONS.—In applying paragraph (3)(C), the determination as to amounts contributed for a taxable year shall be made without regard to section 219(f)(6)."

(e) CLERICAL AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. American Dream IRA."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Subchapter B—Penalty-Free Distributions

SEC. 11016. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES OR TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

"(D) DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR FIRST-TIME HOMEBUYERS OR EDUCATIONAL EXPENSES.—Dis-

tributions to an individual from an individual retirement plan—

“(i) which are qualified first-time homebuyer distributions (as defined in paragraph (6)), or

“(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year.

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking “(B),”.

(2) CERTAIN LINEAL DESCENDANTS AND ANCESTORS TREATED AS DEPENDENTS.—Subparagraph (B) of section 72(t)(2) is amended by striking “medical care” and all that follows and inserting “medical care determined—

“(i) without regard to whether the employee itemizes deductions for such taxable year, and

“(ii) in the case of an individual retirement plan, by treating such employee's dependents as including—

“(I) all children and grandchildren of the employee or such employee's spouse, and

“(II) all ancestors of the employee or such employee's spouse.”

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 72(t)(2) is amended by striking “or (C)” and inserting “, (C), (D), or (E)”.

(c) DEFINITIONS.—Section 72(t) is amended by adding at the end the following new paragraphs:

“(6) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)—

“(A) IN GENERAL.—The term ‘qualified first-time homebuyer distribution’ means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual, the spouse of such individual, or any child, grandchild, or ancestor of such individual or the individual's spouse.

“(B) LIFETIME DOLLAR LIMITATION.—The aggregate amount of payments or distributions received by an individual which may be treated as qualified first-time homebuyer distributions for any taxable year shall not exceed the excess (if any) of—

“(i) $10,000, over

“(ii) the aggregate amounts treated as qualified first-time homebuyer distributions with respect to such individual for all prior taxable years.

“(C) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term ‘qualified acquisition costs’ means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(D) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if—

"(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

"(II) subsection (h) or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(E) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting '120 days' for '60 days' in such section), except that—

"(i) section 408(d)(3)(B) shall not be applied to such contribution, and

"(ii) such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(7) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(ii)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) any child (as defined in section 151(c)(3)), grandchild, or ancestor of the taxpayer or the taxpayer's spouse,

at an eligible educational institution (as defined in section 135(c)(3)).

"(B) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(d) PENALTY-FREE DISTRIBUTIONS FOR CERTAIN UNEMPLOYED INDIVIDUALS.—Paragraph (2) of section 72(t) is amended by adding at the end the following new subparagraph:

"(E) DISTRIBUTIONS TO UNEMPLOYED INDIVIDUALS.—A distribution from an individual retirement plan to an individual after separation from employment, if—

"(i) such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation, and

"(ii) such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year.

To the extent provided in regulations, a self-employed individual shall be treated as meeting the requirements of clause (i) if, under Federal or State law, the individual would have received unemployment compensation but for the fact the individual was self-employed.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Subchapter C—Simple Savings Plans

SEC. 11018. ESTABLISHMENT OF SAVINGS INCENTIVE MATCH PLANS FOR EMPLOYEES OF SMALL EMPLOYERS.

(a) IN GENERAL.—Section 408 (relating to individual retirement accounts) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) SIMPLE RETIREMENT ACCOUNTS.—

"(1) IN GENERAL.—For purposes of this title, the term 'simple retirement account' means an individual retirement plan (as defined in section 7701(a)(37))—

"(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met; and

"(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

"(2) QUALIFIED SALARY REDUCTION ARRANGEMENT.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified salary reduction arrangement' means a written arrangement of an eligible employer under which—

"(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

"(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

"(II) to the employee directly in cash,

"(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of $6,000 for any year,

"(iii) the employer is required to make a matching contribution to the simple retirement account for any

year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

"(iv) no contributions may be made other than contributions described in clause (i) or (iii).

"(B) DEFINITIONS.—For purposes of this subsection—

"(i) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an employer who employs 100 or fewer employees on any day during the year.

"(ii) APPLICABLE PERCENTAGE.—

"(I) IN GENERAL.—The term 'applicable percentage' means 3 percent.

"(II) ELECTION OF LOWER PERCENTAGE.—An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C). An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

"(III) SPECIAL RULE FOR YEARS ARRANGEMENT NOT IN EFFECT.—If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

"(C) ARRANGEMENT MAY BE ONLY PLAN OF EMPLOYER.—

"(i) IN GENERAL.—An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made.

"(ii) QUALIFIED PLAN.—For purposes of this subparagraph, the term 'qualified plan' means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

"(D) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1995, and

any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

"(3) VESTING REQUIREMENTS.—The requirements of this paragraph are met with respect to a simple retirement account if the employee's rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k)(4) shall apply.

"(4) PARTICIPATION REQUIREMENTS.—

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

"(i) received at least $5,000 in compensation from the employer during any 2 preceding years, and

"(ii) are reasonably expected to receive at least $5,000 in compensation during the year,

are eligible to make the election under paragraph (2)(A)(i).

"(B) EXCLUDABLE EMPLOYEES.—An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b)(3).

"(5) ADMINISTRATIVE REQUIREMENTS.—The requirements of this paragraph are met with respect to any simplified retirement account if, under the qualified salary reduction arrangement—

"(A) an employer must—

"(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

"(ii) make the matching contributions under paragraph (2)(A)(iii) not later than the date described in section 404(m)(2)(B),

"(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

"(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year, to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) COMPENSATION.—

"(i) IN GENERAL.—The term 'compensation' means amounts described in paragraphs (3) and (8) of section 6051(a).

"(ii) SELF-EMPLOYED.—In the case of an employee described in subparagraph (B), the term 'compensation' means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection.

"(B) EMPLOYEE.—The term 'employee' includes an employee as defined in section 401(c)(1).

"(C) YEAR.—The term 'year' means the calendar year."

(b) TAX TREATMENT OF SIMPLE RETIREMENT ACCOUNTS.—

(1) DEDUCTIBILITY OF CONTRIBUTIONS BY EMPLOYEES.—

(A) Section 219(b) (relating to maximum amount of deduction) is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR SIMPLE RETIREMENT ACCOUNTS.—This section shall not apply with respect to any amount contributed to a simple retirement account established under section 408(p)."

(B) Section 219(g)(5)(A) (defining active participant) is amended by striking "or" at the end of clause (iv) and by adding at the end the following new clause:

"(vi) any simple retirement account (within the meaning of section 408(p)), or".

(2) DEDUCTIBILITY OF EMPLOYER CONTRIBUTIONS.—Section 404 (relating to deductions for contributions of an employer to pension, etc. plans) is amended by adding at the end the following new subsection:

"(m) SPECIAL RULES FOR SIMPLE RETIREMENT ACCOUNTS.—

"(1) IN GENERAL.—Employer contributions to a simple retirement account shall be treated as if they are made to a plan subject to the requirements of this section.

"(2) TIMING.—

"(A) DEDUCTION.—Contributions described in paragraph (1) shall be deductible in the taxable year of the employer with or within which the calendar year for which the contributions were made ends.

"(B) CONTRIBUTIONS AFTER END OF YEAR.—For purposes of this subsection, contributions shall be treated as made for a taxable year if they are made on account of the taxable year and are made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof)."

(3) CONTRIBUTIONS AND DISTRIBUTIONS.—

(A) Section 402 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new subsection:

"(k) TREATMENT OF SIMPLE RETIREMENT ACCOUNTS.—Rules similar to the rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a simple retirement account under section 408(p)."

(B) Section 408(d)(3) is amended by adding at the end the following new subparagraph:

"(G) SIMPLE RETIREMENT ACCOUNTS.—This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in section 408(p)) unless—

"(i) it is paid into another simple retirement account, or

"(ii) in the case of any payment or distribution to which section 72(t)(8) does not apply, it is paid into an individual retirement plan."

(C) Clause (i) of section 457(c)(2)(B) is amended by striking "section 402(h)(1)(B)" and inserting "section 402(h)(1)(B) or (k)".

(4) PENALTIES.—

(A) EARLY WITHDRAWALS.—Section 72(t) (relating to additional tax in early distributions), as amended by this Act, is amended by adding at the end the following new paragraph:

"(8) SPECIAL RULES FOR SIMPLE RETIREMENT ACCOUNTS.—In the case of any amount received from a simple retirement account (within the meaning of section 408(p)) during the 2-year period beginning on the date such individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under section 408(p)(2), paragraph (1) shall be applied by substituting '25 percent' for '10 percent'."

(B) FAILURE TO REPORT.—Section 6693 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) PENALTIES RELATING TO SIMPLE RETIREMENT ACCOUNTS.—

"(1) EMPLOYER PENALTIES.—An employer who fails to provide 1 or more notices required by section 408(l)(2)(C) shall pay a penalty of $50 for each day on which such failures continue.

"(2) TRUSTEE PENALTIES.—A trustee who fails—

"(A) to provide 1 or more statements required by the last sentence of section 408(i) shall pay a penalty of $50 for each day on which such failures continue, or

"(B) to provide 1 or more summary descriptions required by section 408(l)(2)(B) shall pay a penalty of $50 for each day on which such failures continue.

"(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure which the taxpayer shows was due to reasonable cause."

(5) REPORTING REQUIREMENTS.—

(A)(i) Section 408(l) is amended by adding at the end the following new paragraph:

"(2) SIMPLE RETIREMENT ACCOUNTS.—

"(A) NO EMPLOYER REPORTS.—Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

"(B) SUMMARY DESCRIPTION.—The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) shall provide to the employer maintaining the arrangement, each year a description containing the following information:

"(i) The name and address of the employer and the trustee.

"(ii) The requirements for eligibility for participation.

"(iii) The benefits provided with respect to the arrangement.

"(iv) The time and method of making elections with respect to the arrangement.

"(v) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

"(C) EMPLOYEE NOTIFICATION.—The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B)."

(ii) Section 408(l) is amended by striking "An employer" and inserting—

"(1) IN GENERAL.—An employer".

(5) REPORTING REQUIREMENTS.—Section 408(i) is amended by adding at the end the following new flush sentence:

"In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year."

(6) EXEMPTION FROM TOP-HEAVY PLAN RULES.—Section 416(g)(4) (relating to special rules for top-heavy plans) is amended by adding at the end the following new subparagraph:

"(G) SIMPLE RETIREMENT ACCOUNTS.—The term 'top-heavy plan' shall not include a simple retirement account under section 408(p)."

(7) CONFORMING AMENDMENTS.—

(A) Section 280G(b)(6) is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or" and by adding after subparagraph (C) the following new subparagraph:

"(D) a simple retirement account described in section 408(p)."

(B) Section 402(g)(3) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding after subparagraph (C) the following new subparagraph:

"(D) any elective employer contribution under section 408(p)(2)(A)(i)."

(C) Subsections (b), (c), (m)(4)(B), and (n)(3)(B) of section 414 are each amended by inserting "408(p)," after "408(k),".

(D) Section 4972(d)(1)(A) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding after clause (iii) the following new clause:

"(iv) any simple retirement account (within the meaning of section 408(p))."

(c) REPEAL OF SIMPLIFIED EMPLOYEE PENSIONS.—Section 408(k) is amended by adding at the end the following new paragraph:

"(10) TERMINATION.—This subsection shall not apply to any years beginning after December 31, 1995. This paragraph shall not apply to a simplified employee pension established before January 1, 1996."

(d) MODIFICATIONS OF ERISA.—

(1) REPORTING REQUIREMENTS.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) SIMPLE RETIREMENT ACCOUNTS.—

"(1) NO EMPLOYER REPORTS.—Except as provided in this subsection, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under section 408(p) of the Internal Revenue Code of 1986.

"(2) SUMMARY DESCRIPTION.—The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under section 408(p) of such Code shall provide to the employer maintaining the arrangement each year a description containing the following information:

"(A) The name and address of the employer and the trustee.

"(B) The requirements for eligibility for participation.

"(C) The benefits provided with respect to the arrangement.

"(D) The time and method of making elections with respect to the arrangement.

"(E) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

"(3) EMPLOYEE NOTIFICATION.—The employer shall notify each employee immediately before the period for which an election described in section 408 (p)(5)(C) of such Code may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in paragraph (2)."

(2) FIDUCIARY DUTIES.—Section 404 (c) of such Act (29 U.S.C. 1104(c)) is amended by inserting "(1)" after "(c)", by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and by adding at the end the following new paragraph:

"(2) In the case of a simple retirement account established pursuant to a qualified salary reduction arrangement under section 408(p) of the Internal Revenue Code of 1986, a participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account upon the earliest of—

"(A) an affirmative election with respect to the initial investment of any contribution,

"(B) a rollover to any other simple retirement account or individual retirement plan, or

"(C) one year after the simple retirement account is established.

No reports, other than those required under section 101(g), shall be required with respect to a simple retirement account estab-

lished pursuant to such a qualified salary reduction arrangement.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11019. EXTENSION OF SIMPLE PLAN TO 401(k) ARRANGEMENTS.

(a) ALTERNATIVE METHOD OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Section 401(k) (relating to cash or deferred arrangements) is amended by adding at the end the following new paragraph:

''(11) ADOPTION OF SIMPLE PLAN TO MEET NONDISCRIMINATION TESTS.—

''(A) IN GENERAL.—A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—

''(i) the contribution requirements of subparagraph (B),

''(ii) the exclusive benefit requirements of subparagraph (C), and

''(iii) the vesting requirements of section 408(p)(3).

''(B) CONTRIBUTION REQUIREMENTS.—The requirements of this subparagraph are met if, under the arrangement—

''(i) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds $6,000,

''(ii) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under clause (i) as does not exceed 3 percent of compensation for the year, and

''(iii) no other contributions may be made other than contributions described in clause (i) or (ii).

''(C) EXCLUSIVE BENEFIT.—The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

''(D) DEFINITIONS AND SPECIAL RULE.—

''(i) DEFINITIONS.—For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

''(ii) COORDINATION WITH TOP-HEAVY RULES.—A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year.''

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (10) as para-

graph (11) and by adding after paragraph (9) the following new paragraph:

“(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

“(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11),

“(B) meets the exclusive benefit requirements of subsection (k)(11)(C), and

“(C) meets the vesting requirements of section 408(p)(3).”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1995.

CHAPTER 2—CAPITAL GAINS REFORM

Subchapter A—Taxpayers Other Than Corporations

SEC. 11021. CAPITAL GAINS DEDUCTION.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by redesignating section 1202 as section 1203 and by inserting after section 1201 the following new section:

“SEC. 1202. CAPITAL GAINS DEDUCTION.

“(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a net capital gain, 50 percent of such gain shall be a deduction from gross income.

“(b) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

“(c) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

“(d) SPECIAL RULE FOR COLLECTIBLES.—

“(1) IN GENERAL.—The rate of tax imposed by section 1 on the excess of—

“(A) the net capital gain for the taxable year determined as if section 1222(12) had not applied to any collectible which is sold or exchanged during the taxable year and the basis of which was not adjusted under section 1022(a), over

“(B) the net capital gain for the taxable year,

shall not exceed 28 percent.

“(2) ELECTION.—A taxpayer may elect to treat any collectible specified in such election as not being an indexed asset for purposes of section 1022. Any such election, and any specification therein, once made, shall be irrevocable.

"(e) TRANSITIONAL RULE.—

"(1) IN GENERAL.—In the case of a taxable year which includes January 1, 1995—

"(A) the amount taken into account as the net capital gain under subsection (a) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year on or after January 1, 1995, and

"(B) the amount of the net capital gain taken into account in applying section 1(h) for such year shall be reduced by the amount taken into account under subparagraph (A) for such year.

"(2) SPECIAL RULES FOR PASS-THRU ENTITIES.—

"(A) IN GENERAL.—In applying paragraph (1) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

"(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

"(i) a regulated investment company,

"(ii) a real estate investment trust,

"(iii) an S corporation,

"(iv) a partnership,

"(v) an estate or trust, and

"(vi) a common trust fund.".

(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62, as amended by sections 11004 and 11005, is amended by inserting after paragraph (17) the following new paragraph:

"(18) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202.".

(c) TREATMENT OF COLLECTIBLES.—

(1) IN GENERAL.—Section 1222 is amended by inserting after paragraph (11) the following new paragraph:

"(12) SPECIAL RULE FOR COLLECTIBLES.—

"(A) IN GENERAL.—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

"(B) TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof).".

(2) CHARITABLE DEDUCTION NOT AFFECTED.—

(A) Paragraph (1) of section 170(e) is amended by adding at the end the following new sentence: "For purposes of this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles).".

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(d) TECHNICAL AND CONFORMING CHANGES.—

(1) Section 1 is amended by striking subsection (h).

(2) Paragraph (1) of section 170(e) is amended by striking "the amount of gain" in the material following subparagraph (B)(ii) and inserting "50 percent (80 percent in the case of a corporation) of the amount of gain".

(3) Subparagraph (B) of section 172(d)(2) is amended to read as follows:

"(B) the deduction under section 1202 shall not be allowed.".

(4) The last sentence of section 453A(c)(3) is amended by striking all that follows "long-term capital gain," and inserting "the maximum rate on net capital gain under section 1201 or the deduction under section 1202 (whichever is appropriate) shall be taken into account.".

(5) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to capital gains deduction). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).".

(6) The last sentence of section 643(a)(3) is amended to read as follows: "The deduction under section 1202 (relating to capital gains deduction) shall not be taken into account.".

(7) Subparagraph (C) of section 643(a)(6) is amended by inserting "(i)" before "there shall" and by inserting before the period ", and (ii) the deduction under section 1202 (relating to capital gains deduction) shall not be taken into account".

(8)(A) Paragraph (2) of section 904(b) is amended by striking subparagraph (A), by redesignating subparagraph (B) as subparagraph (A), and by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

"(B) OTHER TAXPAYERS.—In the case of a taxpayer other than a corporation, taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.".

(B) Subparagraph (A) of section 904(b)(2), as so redesignated, is amended—

(i) by striking all that precedes clause (i) and inserting the following:

"(A) CORPORATIONS.—In the case of a corporation—", and

(ii) by striking in clause (i) "in lieu of applying subparagraph (A),".

(C) Paragraph (3) of section 904(b) is amended by striking subparagraphs (D) and (E) and inserting the following new subparagraph:

"(D) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).".

(D) Clause (v) of section 593(b)(2)(D) is amended—

(i) by striking "if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year,", and

(ii) by striking "section 904(b)(3)(E)" and inserting "section 904(b)(3)(D)".

(9) The last sentence of section 1044(d) is amended by striking "1202" and inserting "1203".

(10)(A) Paragraph (2) of section 1211(b) is amended to read as follows:

"(2) the sum of—

"(A) the excess of the net short-term capital loss over the net long-term capital gain, and

"(B) one-half of the excess of the net long-term capital loss over the net short-term capital gain.".

(B) So much of paragraph (2) of section 1212(b) as precedes subparagraph (B) thereof is amended to read as follows:

"(2) SPECIAL RULES.—

"(A) ADJUSTMENTS.—

"(i) For purposes of determining the excess referred to in paragraph (1)(A), there shall be treated as short-term capital gain in the taxable year an amount equal to the lesser of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

"(II) the adjusted taxable income for such taxable year.

"(ii) For purposes of determining the excess referred to in paragraph (1)(B), there shall be treated as short-term capital gain in the taxable year an amount equal to the sum of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) or the adjusted taxable income for such taxable year, whichever is the least, plus

"(II) the excess of the amount described in subclause (I) over the net short-term capital loss (determined without regard to this subsection) for such year.".

(C) Subsection (b) of section 1212 is amended by adding at the end the following new paragraph:

"(3) TRANSITIONAL RULE.—In the case of any amount which, under this subsection and section 1211(b) (as in effect for taxable years beginning before January 1, 1996), is treated as a capital loss in the first taxable year beginning after December 31, 1995, paragraph (2) and section 1211(b) (as so in effect) shall apply (and paragraph (2) and section 1211(b) as in effect for taxable years beginning after December 31, 1995, shall not apply) to the extent such amount exceeds the total of any capital gain net income (determined without regard to this subsection) for taxable years beginning after December 31, 1995.".

(11) Paragraph (1) of section 1402(i) is amended by inserting ", and the deduction provided by section 1202 shall not apply" before the period at the end thereof.

(12) Subsection (e) of section 1445 is amended—

(A) in paragraph (1) by striking "35 percent (or, to the extent provided in regulations, 28 percent)" and inserting "28 percent (or, to the extent provided in regulations, 19.8 percent)", and

(B) in paragraph (2) by striking "35 percent" and inserting "28 percent".

(13)(A) The second sentence of section 7518(g)(6)(A) is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) applies", and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (28 percent".

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) of such Code applies", and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (28 percent".

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by striking the item relating to section 1202 and by inserting after the item relating to section 1201 the following new items:

"Sec. 1202. Capital gains deduction.
"Sec. 1203. Small business stock eligible for preferential rates.".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 1994.

(2) COLLECTIBLES.—The amendments made by subsection (c) shall apply to sales and exchanges after December 31, 1994.

(3) REPEAL OF SECTION 1(h).—The amendment made by subsection (d)(1) shall apply to taxable years beginning after January 1, 1995.

(4) CONTRIBUTIONS.—The amendment made by subsection (d)(2) shall apply to contributions after December 31, 1994.

(5) USE OF LONG-TERM LOSSES.—The amendments made by subsection (d)(10) shall apply to taxable years beginning after December 31, 1995.

(6) WITHHOLDING.—The amendment made by subsection (d)(12) shall apply only to amounts paid after the date of the enactment of this Act.

SEC. 11022. INDEXING OF CERTAIN ASSETS ACQUIRED AFTER DECEMBER 31, 2000, FOR PURPOSES OF DETERMINING GAIN.

(a) IN GENERAL.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

"SEC. 1022. INDEXING OF CERTAIN ASSETS ACQUIRED AFTER DECEMBER 31, 2000, FOR PURPOSES OF DETERMINING GAIN.

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Solely for purposes of determining gain on the sale or other disposition by a taxpayer (other than a corporation) of an indexed asset which has been held for more than 3 years, the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) EXCEPTION FOR DEPRECIATION, ETC.—The deductions for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) common stock in a C corporation (other than a foreign corporation), and

"(B) tangible property,

which is a capital asset or property used in the trade or business (as defined in section 1231(b)).

"(2) STOCK IN CERTAIN FOREIGN CORPORATIONS INCLUDED.—For purposes of this section—

"(A) IN GENERAL.—The term 'indexed asset' includes common stock in a foreign corporation which is regularly traded on an established securities market.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to—

"(i) stock of a foreign investment company (within the meaning of section 1246(b)),

"(ii) stock in a passive foreign investment company (as defined in section 1296),

"(iii) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2), and

"(iv) stock in a foreign personal holding company (as defined in section 552).

"(C) TREATMENT OF AMERICAN DEPOSITORY RECEIPTS.—An American depository receipt for common stock in a foreign corporation shall be treated as common stock in such corporation.

"(c) INDEXED BASIS.—For purposes of this section—

"(1) GENERAL RULE.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, increased by

"(B) the applicable inflation adjustment.

"(2) APPLICABLE INFLATION ADJUSTMENT.—The applicable inflation adjustment for any asset is an amount equal to—

"(A) the adjusted basis of the asset, multiplied by

"(B) the percentage (if any) by which—

"(i) the gross domestic product deflator for the last calendar quarter ending before the asset is disposed of, exceeds

"(ii) the gross domestic product deflator for the last calendar quarter ending before the asset was acquired by the taxpayer.

The percentage under subparagraph (B) shall be rounded to the nearest 1⁄10 of 1 percentage point.

"(3) GROSS DOMESTIC PRODUCT DEFLATOR.—The gross domestic product deflator for any calendar quarter is the implicit price deflator for the gross domestic product for such quarter (as shown in the last revision thereof released by the Secretary of Commerce before the close of the following calendar quarter).

"(d) SUSPENSION OF HOLDING PERIOD WHERE DIMINISHED RISK OF LOSS; TREATMENT OF SHORT SALES.—

"(1) IN GENERAL.—If the taxpayer (or a related person) enters into any transaction which substantially reduces the risk of loss from holding any asset, such asset shall not be treated as an indexed asset for the period of such reduced risk.

"(2) SHORT SALES.—

"(A) IN GENERAL.—In the case of a short sale of an indexed asset with a short sale period in excess of 3 years, for purposes of this title, the amount realized shall be an amount equal to the amount realized (determined without regard to this paragraph) increased by the applicable inflation adjustment. In applying subsection (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date of acquisition and the closing date for the sale shall be treated as the date of disposition.

"(B) SHORT SALE PERIOD.—For purposes of subparagraph (A), the short sale period begins on the day that the property is sold and ends on the closing date for the sale.

"(e) TREATMENT OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

"(1) ADJUSTMENTS AT ENTITY LEVEL.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

"(B) EXCEPTION FOR CORPORATE SHAREHOLDERS.—Under regulations—

"(i) in the case of a distribution by a qualified investment entity (directly or indirectly) to a corporation—

"(I) the determination of whether such distribution is a dividend shall be made without regard to this section, and

"(II) the amount treated as gain by reason of the receipt of any capital gain dividend shall be increased by the percentage by which the entity's

net capital gain for the taxable year (determined without regard to this section) exceeds the entity's net capital gain for such year determined with regard to this section, and

"(ii) there shall be other appropriate adjustments (including deemed distributions) so as to ensure that the benefits of this section are not allowed (directly or indirectly) to corporate shareholders of qualified investment entities.

For purposes of the preceding sentence, any amount includible in gross income under section 852(b)(3)(D) shall be treated as a capital gain dividend and an S corporation shall not be treated as a corporation.

"(C) EXCEPTION FOR QUALIFICATION PURPOSES.—This section shall not apply for purposes of sections 851(b) and 856(c).

"(D) EXCEPTION FOR CERTAIN TAXES IMPOSED AT ENTITY LEVEL.—

"(i) TAX ON FAILURE TO DISTRIBUTE ENTIRE GAIN.—If any amount is subject to tax under section 852(b)(3)(A) for any taxable year, the amount on which tax is imposed under such section shall be increased by the percentage determined under subparagraph (B)(i)(II). A similar rule shall apply in the case of any amount subject to tax under paragraph (2) or (3) of section 857(b) to the extent attributable to the excess of the net capital gain over the deduction for dividends paid determined with reference to capital gain dividends only. The first sentence of this clause shall not apply to so much of the amount subject to tax under section 852(b)(3)(A) as is designated by the company under section 852(b)(3)(D).

"(ii) OTHER TAXES.—This section shall not apply for purposes of determining the amount of any tax imposed by paragraph (4), (5), or (6) of section 857(b).

"(2) ADJUSTMENTS TO INTERESTS HELD IN ENTITY.—

"(A) REGULATED INVESTMENT COMPANIES.—Stock in a regulated investment company (within the meaning of section 851) shall be an indexed asset for any calendar quarter in the same ratio as—

"(i) the average of the fair market values of the indexed assets held by such company at the close of each month during such quarter, bears to

"(ii) the average of the fair market values of all assets held by such company at the close of each such month.

"(B) REAL ESTATE INVESTMENT TRUSTS.—Stock in a real estate investment trust (within the meaning of section 856) shall be an indexed asset for any calendar quarter in the same ratio as—

"(i) the fair market value of the indexed assets held by such trust at the close of such quarter, bears to

"(ii) the fair market value of all assets held by such trust at the close of such quarter.

"(C) RATIO OF 80 PERCENT OR MORE.—If the ratio for any calendar quarter determined under subparagraph (A) or (B) would (but for this subparagraph) be 80 percent or more, such ratio for such quarter shall be 100 percent.

"(D) RATIO OF 20 PERCENT OR LESS.—If the ratio for any calendar quarter determined under subparagraph (A) or (B) would (but for this subparagraph) be 20 percent or less, such ratio for such quarter shall be zero.

"(E) LOOK-THRU OF PARTNERSHIPS.—For purposes of this paragraph, a qualified investment entity which holds a partnership interest shall be treated (in lieu of holding a partnership interest) as holding its proportionate share of the assets held by the partnership.

"(3) TREATMENT OF RETURN OF CAPITAL DISTRIBUTIONS.—Except as otherwise provided by the Secretary, a distribution with respect to stock in a qualified investment entity which is not a dividend and which results in a reduction in the adjusted basis of such stock shall be treated as allocable to stock acquired by the taxpayer in the order in which such stock was acquired.

"(4) QUALIFIED INVESTMENT ENTITY.—For purposes of this subsection, the term 'qualified investment entity' means—

"(A) a regulated investment company (within the meaning of section 851), and

"(B) a real estate investment trust (within the meaning of section 856).

"(f) OTHER PASS-THRU ENTITIES.—

"(1) PARTNERSHIPS.—

"(A) IN GENERAL.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

"(B) SPECIAL RULE IN THE CASE OF SECTION 754 ELECTIONS.—In the case of a transfer of an interest in a partnership with respect to which the election provided in section 754 is in effect—

"(i) the adjustment under section 743(b)(1) shall, with respect to the transferor partner, be treated as a sale of the partnership assets for purposes of applying this section, and

"(ii) with respect to the transferee partner, the partnership's holding period for purposes of this section in such assets shall be treated as beginning on the date of such adjustment.

"(2) S CORPORATIONS.—In the case of an S corporation, the adjustment made under subsection (a) at the corporate level shall be passed through to the shareholders. This section shall not apply for purposes of determining the amount of any tax imposed by section 1374 or 1375.

"(3) COMMON TRUST FUNDS.—In the case of a common trust fund, the adjustment made under subsection (a) at the trust level shall be passed through to the participants.

"(4) INDEXING ADJUSTMENT DISREGARDED IN DETERMINING LOSS ON SALE OF INTEREST IN ENTITY.—Notwithstanding the preceding provisions of this subsection, for purposes of deter-

mining the amount of any loss on a sale or exchange of an interest in a partnership, S corporation, or common trust fund, the adjustment made under subsection (a) shall not be taken into account in determining the adjusted basis of such interest.

"(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

"(1) IN GENERAL.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

"(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

"(B) persons treated as single employer under subsection (b) or (c) of section 414.

"(h) TRANSFERS TO INCREASE INDEXING ADJUSTMENT.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is to secure or increase an adjustment under subsection (a), the Secretary may disallow part or all of such adjustment or increase.

"(i) SPECIAL RULES.—For purposes of this section—

"(1) TREATMENT OF IMPROVEMENTS, ETC.—If there is an addition to the adjusted basis of any tangible property or of any stock in a corporation during the taxable year by reason of an improvement to such property or a contribution to capital of such corporation—

"(A) such addition shall never be taken into account under subsection (c)(1)(A) if the aggregate amount thereof during the taxable year with respect to such property or stock is less than $1,000, and

"(B) such addition shall be treated as a separate asset acquired at the close of such taxable year if the aggregate amount thereof during the taxable year with respect to such property or stock is $1,000 or more.

A rule similar to the rule of the preceding sentence shall apply to any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—The applicable inflation adjustment shall be appropriately reduced for periods during which the asset was not an indexed asset.

"(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

"(4) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

"(5) COLLAPSIBLE CORPORATIONS.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Indexing of certain assets acquired after December 31, 2000, for purposes of determining gain."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to the disposition of any property the holding period of which begins after December 31, 2000.

(2) CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS.—The amendments made by this section shall not apply to the disposition of any property acquired after December 31, 2000, from a related person (as defined in section 1022(g)(2) of the Internal Revenue Code of 1986, as added by this section) if—

(A) such property was so acquired for a price less than the property's fair market value, and

(B) the amendments made by this section did not apply to such property in the hands of such related person.

(d) ELECTION TO RECOGNIZE GAIN ON ASSETS HELD ON JANUARY 1, 2001.—For purposes of the Internal Revenue Code of 1986—

(1) IN GENERAL.—A taxpayer other than a corporation may elect to treat—

(A) any readily tradable stock (which is an indexed asset) held by such taxpayer on January 1, 2001, and not sold before the next business day after such date, as having been sold on such next business day for an amount equal to its closing market price on such next business day (and as having been reacquired on such next business day for an amount equal to such closing market price), and

(B) any other indexed asset held by the taxpayer on January 1, 2001, as having been sold on such date for an amount equal to its fair market value on such date (and as having been reacquired on such date for an amount equal to such fair market value).

(2) TREATMENT OF GAIN OR LOSS.—

(A) Any gain resulting from an election under paragraph (1) shall be treated as received or accrued on the date the asset is treated as sold under paragraph (1) and shall be recognized notwithstanding any provision of the Internal Revenue Code of 1986.

(B) Any loss resulting from an election under paragraph (1) shall not be allowed for any taxable year.

(3) ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe and shall specify the assets for which such election is made. Such an election, once made with respect to any asset, shall be irrevocable.

(4) READILY TRADABLE STOCK.—For purposes of this subsection, the term "readily tradable stock" means any stock which, as of January 1, 2001, is readily tradable on an established securities market or otherwise.

(e) TREATMENT OF PRINCIPAL RESIDENCES.—Property held and used by the taxpayer on January 1, 2001, as his principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986) shall be treated—

(1) for purposes of subsection (c)(1) of this section and section 1022 of such Code, as having a holding period which begins on January 1, 2001, and

(2) for purposes of section 1022(c)(2)(B)(ii) of such Code, as having been acquired on January 1, 2001.

Subsection (d) shall not apply to property to which this subsection applies.

SEC. 11023. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) REDUCED RATE IN LIEU OF EXCLUSION.—

(1) Section 1, as amended by section 11021, is amended by adding at the end the following new subsection:

"(h) MAXIMUM CAPITAL GAINS RATE FOR CERTAIN SMALL BUSINESS STOCK.—

"(1) IN GENERAL.—If for any taxable year a taxpayer has gain from the sale or exchange of any qualified small business stock held for more than 5 years, then the tax imposed by this section shall not exceed the sum of—

"(A) a tax computed on the taxable income reduced by ½ the amount of the small business gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(B) a tax of 14 percent of the small business gain.

"(2) SMALL BUSINESS GAIN.—For purposes of paragraph (1), the term 'small business gain' means the lesser of—

"(A) gain from the sale or exchange of any qualified small business stock held for more than 5 years, or

"(B) the net capital gain taken into account under section 1202(a).

"(3) QUALIFIED SMALL BUSINESS STOCK.—The term 'qualified small business stock' has the meaning given such term by section 1203(c)."

(2) Subsection (a) of section 1203, as redesignated by section 11021, is amended to read as follows:

"(a) APPLICATION OF REDUCED RATES TO QUALIFIED SMALL BUSINESS STOCK GAINS.—

"For treatment of gain on qualified small business stock held for more than 5 years, see sections 1(h) and 1201(b).".

(b) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) Subsection (a) of section 57 is amended by striking paragraph (7).

(2) Subclause (II) of section 53(d)(1)(B)(ii) is amended by striking ", (5), and (7)" and inserting "and (5)".

(c) STOCK OF LARGER BUSINESSES ELIGIBLE FOR REDUCED RATES.—Paragraph (1) of section 1203(d), as redesignated by sec-

tion 11021, is amended by striking "$50,000,000" each place it appears and inserting "$100,000,000".

(d) REPEAL OF PER-ISSUER LIMITATION.—Section 1203, as so redesignated, is amended by striking subsection (b).

(e) OTHER MODIFICATIONS.—

(1) REPEAL OF WORKING CAPITAL LIMITATION.—Paragraph (6) of section 1203(e), as so redesignated, is amended—

(A) by striking "2 years" in subparagraph (B) and inserting "5 years", and

(B) by striking the last sentence.

(2) EXCEPTION FROM REDEMPTION RULES WHERE BUSINESS PURPOSE.—Paragraph (3) of section 1203(c), as so redesignated, is amended by adding at the end the following new subparagraph:

"(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitations of this section.".

(f) CLERICAL AMENDMENT.—The section heading for section 1203, as redesignated by section 11021, is amended to read as follows:

"SEC. 1203. SMALL BUSINESS STOCK ELIGIBLE FOR PREFERENTIAL RATES."

(g) EFFECTIVE DATES.—

(1) REDUCED RATES.—The amendments made by subsections (a) and (b) shall apply to taxable years beginning after the date of the enactment of this Act.

(2) INCREASE IN SIZE.—The amendment made by subsection (c) shall apply to stock issued after the date of the enactment of this Act.

(3) OTHER RULES.—The amendments made by subsections (d) and (e) shall apply to stock issued after August 10, 1993.

Subchapter B—Corporate Capital Gains

SEC. 11025. REDUCTION OF ALTERNATIVE CAPITAL GAIN TAX FOR CORPORATIONS.

(a) IN GENERAL.—Section 1201 is amended to read as follows:

"SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS.

"(a) GENERAL RULE.—If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, and 831 (a) and (b) (whichever is applicable), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

"(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(2) a tax of 28 percent of the net capital gain.

"(b) SPECIAL RULES FOR QUALIFIED SMALL BUSINESS GAIN.—

"(1) IN GENERAL.—If for any taxable year a corporation has gain from the sale or exchange of any qualified small business stock held for more than 5 years, the amount determined under

subsection (a)(2) for such taxable year shall be equal to the sum of—

“(A) 21 percent of the lesser of such gain or the corporation’s net capital gain, plus

“(B) 28 percent of the net capital gain reduced by the gain taken into account under subparagraph (A).

“(2) QUALIFIED SMALL BUSINESS STOCK.—For purposes of paragraph (1), the term ‘qualified small business stock’ has the meaning given such term by section 1203(c), except that stock shall not be treated as qualified small business stock if such stock was at any time held by a member of the parent-subsidiary controlled group (as defined in section 1203(d)(3)) which includes the qualified small business.

“(c) TRANSITIONAL RULE.—

“(1) IN GENERAL.—In applying this section, net capital gain for any taxable year shall not exceed the net capital gain determined by taking into account only gains and losses properly taken into account for the portion of the taxable year after December 31, 1994.

“(2) SPECIAL RULE FOR PASS-THRU ENTITIES.—Section 1202(e)(2) shall apply for purposes of paragraph (1).

“(d) CROSS REFERENCES.—

“For computation of the alternative tax—

“(1) in the case of life insurance companies, see section 801(a)(2),

“(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D), and

“(3) in the case of real estate investment trusts, see section 857(b)(3)(A).”.

(b) TECHNICAL AMENDMENT.—Clause (iii) of section 852(b)(3)(D) is amended by striking “65 percent” and inserting “72 percent”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after December 31, 1994.

(2) QUALIFIED SMALL BUSINESS STOCK.—Section 1201(b) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to gain from qualified small business stock acquired on or after the date of the enactment of this Act.

Subchapter C—Capital Loss Deduction Allowed With Respect to Sale or Exchange of Principal Residence

SEC. 11026. CAPITAL LOSS DEDUCTION ALLOWED WITH RESPECT TO SALE OR EXCHANGE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (c) of section 165 (relating to limitation on losses of individuals) is amended by striking “and” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting “; and”, and by adding at the end the following new paragraph:

“(4) losses arising from the sale or exchange of the principal residence (within the meaning of section 1034) of the taxpayer.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales and exchanges after December 31, 1994, in taxable years ending after such date.

CHAPTER 3—CORPORATE ALTERNATIVE MINIMUM TAX REFORM

SEC. 11031. MODIFICATION OF DEPRECIATION RULES UNDER MINIMUM TAX.

(a) IN GENERAL.—Clause (i) of section 56(a)(1)(A) is amended by inserting "and before January 1, 1996," after "December 31, 1986,".

(b) CONFORMING AMENDMENT.—Clause (ii) of section 56(a)(1)(A) is amended by striking "The method" and inserting "In the case of property placed in service before January 1, 1996, the method".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1995.

SEC. 11032. LONG-TERM UNUSED CREDITS ALLOWED AGAINST MINIMUM TAX.

(a) IN GENERAL.—Section 53(c) (relating to limitation) is amended by adding at the end the following new paragraph:

"(2) SPECIAL RULE FOR TAXPAYERS WITH LONG-TERM UNUSED CREDITS.—

"(A) IN GENERAL.—If—

"(i) a corporation to which section 56(g) applies has a long-term unused minimum tax credit for a taxable year, and

"(ii) no credit would be allowable under this section for the taxable year by reason of paragraph (1),

then there shall be allowed a credit under subsection (a) for the taxable year in the amount determined under subparagraph (B).

"(B) AMOUNT OF CREDIT.—For purposes of subparagraph (A), the amount of the credit shall be equal to the least of the following for the taxable year:

"(i) The long-term unused minimum tax credit.

"(ii) 50 percent of the taxpayer's tentative minimum tax.

"(iii) The excess (if any) of the amount under paragraph (1)(B) over the amount under paragraph (1)(A).

"(C) LONG-TERM UNUSED MINIMUM TAX CREDIT.—For purposes of this paragraph—

"(i) IN GENERAL.—The long-term unused minimum tax credit for any taxable year is the portion of the minimum tax credit determined under subsection (b) attributable to the adjusted net minimum tax for taxable years beginning after 1986 and ending before the 7th taxable year immediately preceding the taxable year for which the determination is being made.

"(ii) FIRST-IN, FIRST-OUT ORDERING RULE.—For purposes of clause (i), credits shall be treated as allowed under subsection (a) on a first-in, first-out basis.".

(b) CONFORMING AMENDMENTS.—(1) Section 53(c) (as in effect before the amendment made by subsection (a)) is amended—

(A) by striking "The" and inserting:

"(1) IN GENERAL.—The", and

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(2) Subparagraph (C) of section 108(b)(4) is amended by striking "and (G)" in the text and heading thereof and inserting ", (C), and (G)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

CHAPTER 4—COST RECOVERY PROVISIONS

SEC. 11035. TREATMENT OF ABANDONMENT OF LESSOR IMPROVEMENTS AT TERMINATION OF LEASE.

(a) IN GENERAL.—Paragraph (8) of section 168(i) is amended to read as follows:

"(8) TREATMENT OF LEASEHOLD IMPROVEMENTS.—

"(A) IN GENERAL.—In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

"(B) TREATMENT OF LESSOR IMPROVEMENTS WHICH ARE ABANDONED AT TERMINATION OF LEASE.—An improvement—

"(i) which is made by the lessor of leased property for the lessee of such property, and

"(ii) which is irrevocably disposed of or abandoned by the lessor at the termination of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed of by the lessor when so disposed of or abandoned."

(b) EFFECTIVE DATE.—Subparagraph (B) of section 168(i)(8) of the Internal Revenue Code of 1986, as added by the amendment made by subsection (a), shall apply to improvements disposed of or abandoned after March 13, 1995.

SEC. 11036. INCREASE IN EXPENSE TREATMENT FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Paragraph (1) of section 179(b) (relating to dollar limitation) is amended to read as follows:

"(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed the following applicable amount:

"If the taxable year begins in:	*The applicable amount is:*
1996	*$19,000*
1997	*20,000*
1998	*21,000*
1999	*22,000*
2000	*23,000*
2001	*24,000*
2002 or thereafter	*25,000."*

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

Subtitle C—Health Related Provisions

CHAPTER 1—LONG-TERM CARE PROVISIONS

Subchapter A—Long-Term Care Services and Contracts

PART I—GENERAL PROVISIONS

SEC. 11041. TREATMENT OF LONG-TERM CARE INSURANCE.

(a) GENERAL RULE.—Chapter 79 (relating to definitions) is amended by inserting after section 7702A the following new section:

"SEC. 7702B. TREATMENT OF QUALIFIED LONG-TERM CARE INSURANCE.

"(a) IN GENERAL.—For purposes of this title—

"(1) a qualified long-term care insurance contract shall be treated as an accident and health insurance contract,

"(2) amounts (other than policyholder dividends, as defined in section 808, or premium refunds) received under a qualified long-term care insurance contract shall be treated as amounts received for personal injuries and sickness and shall be treated as reimbursement for expenses actually incurred for medical care (as defined in section 213(d)),

"(3) any plan of an employer providing coverage under a qualified long-term care insurance contract shall be treated as an accident and health plan with respect to such coverage,

"(4) except as provided in subsection (d)(3), amounts paid for a qualified long-term care insurance contract providing the benefits described in subsection (b)(2)(A) shall be treated as payments made for insurance for purposes of section 213(d)(1)(D), and

"(5) a qualified long-term care insurance contract shall be treated as a guaranteed renewable contract subject to the rules of section 816(e).

"(b) QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—For purposes of this title—

"(1) IN GENERAL.—The term 'qualified long-term care insurance contract' means any insurance contract if—

"(A) the only insurance protection provided under such contract is coverage of qualified long-term care services,

"(B) such contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount,

"(C) such contract is guaranteed renewable,

"(D) such contract does not provide for a cash surrender value or other money that can be—

"(i) paid, assigned, or pledged as collateral for a loan, or

"(ii) borrowed,

other than as provided in subparagraph (E) or paragraph (2)(C), *"(E) all refunds of premiums, and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, and*

"(F) such contract meets the requirements of subsection (f).

"(2) SPECIAL RULES.—

"(A) PER DIEM, ETC. PAYMENTS PERMITTED.—A contract shall not fail to be described in subparagraph (A) or (B) of paragraph (1) by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

"(B) SPECIAL RULES RELATING TO MEDICARE.—

"(i) Paragraph (1)(B) shall not apply to expenses which are reimbursable under title XVIII of the Social Security Act only as a secondary payor.

"(ii) No provision of law shall be construed or applied so as to prohibit the offering of a qualified long-term care insurance contract on the basis that the contract coordinates its benefits with those provided under such title.

"(C) REFUNDS OF PREMIUMS.—Paragraph (1)(E) shall not apply to any refund on the death of the insured, or on a complete surrender or cancellation of the contract, which cannot exceed the aggregate premiums paid under the contract. Any refund on a complete surrender or cancellation of the contract shall be includible in gross income to the extent that any deduction or exclusion was allowable with respect to the premiums.

"(c) QUALIFIED LONG-TERM CARE SERVICES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified long-term care services' means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services, which—

"(A) are required by a chronically ill individual, and

"(B) are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

"(2) CHRONICALLY ILL INDIVIDUAL.—

"(A) IN GENERAL.—The term 'chronically ill individual' means any individual who has been certified by a licensed health care practitioner as—

"(i) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity or to cognitive impairment, or

"(ii) having a level of disability similar (as determined by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i).

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the preceding 12-month period a licensed health care *practitioner has certified that such individual meets such requirements.*

"(B) ACTIVITIES OF DAILY LIVING.—For purposes of subparagraph (A), each of the following is an activity of daily living:

"(i) Eating.

"(ii) Toileting.

"(iii) Transferring.

"(iv) Bathing.

"(v) Dressing.

"(vi) Continence.

Nothing in this section shall be construed to require a contract to take into account all of the preceding activities of daily living.

"(3) MAINTENANCE OR PERSONAL CARE SERVICES.—The term 'maintenance or personal care services' means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

"(4) LICENSED HEALTH CARE PRACTITIONER.—The term 'licensed health care practitioner' means any physician (as defined in section 1861(r)(1) of the Social Security Act) and any registered professional nurse, licensed social worker, or other individual who meets such requirements as may be prescribed by the Secretary.

"(d) SPECIAL RULES FOR TREATMENT OF INSUREDS.—

"(1) AGGREGATE PAYMENTS IN EXCESS OF LIMITS.—

"(A) IN GENERAL.—If the aggregate amount of periodic payments under all qualified long-term care insurance contracts with respect to an insured for any period exceed the dollar amount in effect for such period under subparagraph (C), such excess payments shall be treated as made for qualified long-term care services only to the extent of the costs incurred by the payee (not otherwise compensated for by insurance or otherwise) for qualified long-term care services provided during such period for such insured.

"(B) PERIODIC PAYMENTS.—For purposes of subparagraph (A), the term 'periodic payment' means any payment (whether on a periodic basis or otherwise) made without regard to the extent of the costs incurred by the payee for qualified long-term care services.

"(C) DOLLAR AMOUNT.—The dollar amount in effect under this paragraph shall be $175 per day (or the equivalent amount in the case of payments on another periodic basis).

"(D) INFLATION ADJUSTMENT.—In the case of a calendar year after 1996, the dollar amount contained in subparagraph (C) shall be increased at the same time and in the same manner as amounts are increased pursuant to section 213(d)(11).

"(e) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE CONTRACT.—Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insur-

ance coverage (whether or not qualified) provided by a rider on a life insurance contract—

"(1) IN GENERAL.—This section shall apply as if the portion of the contract providing such coverage is a separate contract.

"(2) APPLICATION OF 7702.—Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to a life insurance contract, as of any date—

"(A) by the sum of any charges (but not premium payments) against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A)) for such coverage made to that date under the contract, less

"(B) any such charges the imposition of which reduces the premiums paid for the contract (within the meaning of section 7702(f)(1)).

"(3) APPLICATION OF SECTION 213.—No deduction shall be allowed under section 213(a) for charges against the life insurance contract's cash surrender value described in paragraph (2), unless such charges are includible in income as a result of the application of section 72(e)(10) and the rider is a qualified long-term care insurance contract under subsection (b).

"(4) PORTION DEFINED.—For purposes of this subsection, the term 'portion' means only the terms and benefits under a life insurance contract that are in addition to the terms and benefits under the contract without regard to the coverage under a qualified long-term care insurance contract."

(b) RESERVE METHOD.—Clause (iii) of section 807(d)(3)(A) is amended by inserting "(other than a qualified long-term care insurance contract, as defined in section 7702B(b))" after "insurance contract".

(c) LONG-TERM CARE INSURANCE NOT PERMITTED UNDER CAFETERIA PLANS OR FLEXIBLE SPENDING ARRANGEMENTS.—

(1) CAFETERIA PLANS.—Section 125(f) is amended by adding at the end the following new sentence: "Such term shall not include any long-term care insurance contract (as defined in section 4980C)."

(2) FLEXIBLE SPENDING ARRANGEMENTS.—The text of section 106 (relating to contributions by employer to accident and health plans) is amended to read as follows:

"(a) GENERAL RULE.—Except as provided in subsection (b), gross income of an employee does not include employer-provided coverage under an accident or health plan.

"(b) INCLUSION OF LONG-TERM CARE BENEFITS PROVIDED THROUGH FLEXIBLE SPENDING ARRANGEMENTS.—

"(1) IN GENERAL.—Effective on and after January 1, 1996, gross income of an employee shall include employer-provided coverage for qualified long-term care services (as defined in section 7702B(c)) to the extent that such coverage is provided through a flexible spending or similar arrangement.

"(2) FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which—

"(A) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

"(B) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage."

(d) CONTINUATION COVERAGE EXCISE TAX NOT TO APPLY.—Subsection (f) of section 4980B is amended by adding at the end the following new paragraph:

"(9) CONTINUATION OF LONG-TERM CARE COVERAGE NOT REQUIRED.—A group health plan shall not be treated as failing to meet the requirements of this subsection solely by reason of failing to provide coverage under any qualified long-term care insurance contract (as defined in section 7702B(b))."

(e) AMOUNTS PAID TO RELATIVES TREATED AS NOT PAID FOR MEDICAL CARE.—Section 213(d) is amended by adding at the end the following new paragraph:

"(10) CERTAIN PAYMENTS TO RELATIVES TREATED AS NOT PAID FOR MEDICAL CARE.—An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—

"(A) by a relative (directly or through a partnership, corporation, or other entity) unless the relative is a licensed professional with respect to such services, or

"(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term 'relative' means an individual bearing a relationship to the individual which is described in any of paragraphs (1) through (8) of section 152(a). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance."

(f) CLERICAL AMENDMENT.—The table of sections for chapter 79 is amended by inserting after the item relating to section 7702A the following new item:

"Sec. 7702B. Treatment of qualified long-term care insurance.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to contracts issued after December 31, 1995.

(2) CONTINUATION OF EXISTING POLICIES.—In the case of any contract issued before January 1, 1996, which met the long-term care insurance requirements of the State in which the contract was sitused at the time the contract was issued—

(A) such contract shall be treated for purposes of the Internal Revenue Code of 1986 as a qualified long-term care insurance contract (as defined in section 7702B(b) of such Code), and

(B) services provided under, or reimbursed by, such contract shall be treated for such purposes as qualified

long-term care services (as defined in section 7702B(c) of such Code).

(3) EXCHANGES OF EXISTING POLICIES.—If, after the date of enactment of this Act and before January 1, 1997, a contract providing for long-term care insurance coverage is exchanged solely for a qualified long-term care insurance contract (as defined in section 7702B(b) of such Code), no gain or loss shall be recognized on the exchange. If, in addition to a qualified long-term care insurance contract, money or other property is received in the exchange, then any gain shall be recognized to the extent of the sum of the money and the fair market value of the other property received. For purposes of this paragraph, the cancellation of a contract providing for long-term care insurance coverage and reinvestment of the cancellation proceeds in a qualified long-term care insurance contract within 60 days thereafter shall be treated as an exchange.

(4) ISSUANCE OF CERTAIN RIDERS PERMITTED.—For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract—

(A) the issuance of a rider which is treated as a qualified long-term care insurance contract under section 7702B, and

(B) the addition of any provision required to conform any other long-term care rider to be so treated,

shall not be treated as a modification or material change of such contract.

SEC. 11042. QUALIFIED LONG-TERM CARE SERVICES TREATED AS MEDICAL CARE.

(a) GENERAL RULE.—Paragraph (1) of section 213(d) (defining medical care) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified long-term care services (as defined in section 7702B(c)), or".

(b) TECHNICAL AMENDMENTS.—

(1) Subparagraph (D) of section 213(d)(1) (as redesignated by subsection (a)) is amended by striking "subparagraphs (A) and (B)" and inserting "subparagraphs (A), (B), and (C)".

(2)(A) Paragraph (1) of section 213(d) is amended by adding at the end the following new flush sentence:

"In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (11)) shall be taken into account under subparagraph (D)."

(B) Subsection (d) of section 213 is amended by adding at the end the following new paragraph:

"(11) ELIGIBLE LONG-TERM CARE PREMIUMS.—

"(A) IN GENERAL.—For purposes of this section, the term 'eligible long-term care premiums' means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

"In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	$200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500.

"(B) INDEXING.—

"(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1996, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.

"(ii) MEDICAL CARE COST ADJUSTMENT.—For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

"(I) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

"(II) such component for August of 1995.

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence."

(3) Paragraph (6) of section 213(d) is amended—

(A) by striking "subparagraphs (A) and (B)" and inserting "subparagraphs (A), (B), and (C)", and

(B) by striking "paragraph (1)(C)" in subparagraph (A) and inserting "paragraph (1)(D)".

(4) Paragraph (7) of section 213(d) is amended by striking "subparagraphs (A) and (B)" and inserting "subparagraphs (A), (B), and (C)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11043. CERTAIN EXCHANGES OF LIFE INSURANCE CONTRACTS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS NOT TAXABLE.

(a) IN GENERAL.—Subsection (a) of section 1035 (relating to certain exchanges of insurance contracts) is amended by striking the period at the end of paragraph (3) and inserting "; or", and by adding at the end the following new paragraph:

"(4) a contract of life insurance or an endowment or annuity contract for a qualified long-term care insurance contract (as defined in section 7702B(b))."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11044. EXCEPTION FROM PENALTY TAX FOR AMOUNTS WITHDRAWN FROM CERTAIN RETIREMENT PLANS FOR QUALIFIED LONG-TERM CARE INSURANCE.

(a) IN GENERAL.—Paragraph (2) of section 72(t) is amended by adding at the end the following new subparagraph:

"(F) PREMIUMS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.—Distributions to an individual from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3), to the extent such distributions do not exceed the premiums for a qualified long-term care insurance contract (as defined in section 7702B(b)) for such individual or the spouse of such individual. In applying subparagraph (B), such premiums shall be treated as amounts not paid for medical care."

(b) DISTRIBUTIONS PERMITTED FROM CERTAIN PLANS TO PAY LONG-TERM CARE PREMIUMS.—

(1) Section 401(k)(2)(B)(i) is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date distributions for premiums for a long-term care insurance contract (as defined in section 7702B(b)) for coverage of such individual or the spouse of such individual are made, and".

(2) Section 403(b)(11) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for the payment of premiums for a long-term care insurance contract (as defined in section 7702B(b)) for coverage of the employee or the spouse of the employee."

(3) Subparagraph (A) of section 457(d)(1) is amended by striking "or" at the end of clause (ii), by striking "and" at the end of clause (iii) and inserting "or", and by inserting after clause (iii) the following new clause:

"(iv) the date distributions for premiums for a long-term care insurance contract (as defined in section 7702B(b)) for coverage of such individual or the spouse of such individual are made, and".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1995.

SEC. 11045. REPORTING REQUIREMENTS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61, as amended by section 11004, is amended by adding at the end the following new section:

"SEC. 6050R. CERTAIN LONG-TERM CARE BENEFITS.

"(a) REQUIREMENT OF REPORTING.—Any person who pays long-term care benefits shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

"(1) the aggregate amount of such benefits paid by such person to any individual during any calendar year, and

"(2) the name, address, and TIN of such individual.

"(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name of the person making the payments, and

"(2) the aggregate amount of long-term care benefits paid to the individual which are required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

"(c) LONG-TERM CARE BENEFITS.—For purposes of this section, the term 'long-term care benefit' means any amount paid under a long-term care insurance policy (within the meaning of section 4980C(e)).".

(b) PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1), as amended by section 11004, is amended by redesignating clauses (x) through (xv) as clauses (xi) through (xvi), respectively, and by inserting after clause (ix) the following new clause:

"(x) section 6050R (relating to certain long-term care benefits),".

(2) Paragraph (2) of section 6724(d), as amended by section 11004, is amended by redesignating subparagraphs (R) through (U) as subparagraphs (S) through (V), respectively, and by inserting after subparagraph (P) the following new subparagraph:

"(R) section 6050R(b) (relating to certain long-term care benefits),".

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end the following new item:

"Sec. 6050R. Certain long-term care benefits."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits paid after December 31, 1995.

PART II—CONSUMER PROTECTION PROVISIONS

SEC. 11051. POLICY REQUIREMENTS.

Section 7702B (as added by section 11041) is amended by adding at the end the following new subsection:

"(f) CONSUMER PROTECTION PROVISIONS.—

"(1) IN GENERAL.—The requirements of this subsection are met with respect to any contract if any long-term care insurance policy issued under the contract meets—

"(A) the requirements of the model regulation and model Act described in paragraph (2),

"(B) the disclosure requirement of paragraph (3), and

"(C) the requirements relating to nonforfeitability under paragraph (4).

"(2) REQUIREMENTS OF MODEL REGULATION AND ACT.—

“(A) IN GENERAL.—The requirements of this paragraph are met with respect to any policy if such policy meets—

“(i) MODEL REGULATION.—The following requirements of the model regulation:

“(I) Section 7A (relating to guaranteed renewal or noncancellability), and the requirements of section 6B of the model Act relating to such section 7A.

“(II) Section 7B (relating to prohibitions on limitations and exclusions).

“(III) Section 7C (relating to extension of benefits).

“(IV) Section 7D (relating to continuation or conversion of coverage).

“(V) Section 7E (relating to discontinuance and replacement of policies).

“(VI) Section 8 (relating to unintentional lapse).

“(VII) Section 9 (relating to disclosure), other than section 9F thereof.

“(VIII) Section 10 (relating to prohibitions against post-claims underwriting).

“(IX) Section 11 (relating to minimum standards).

“(X) Section 12 (relating to requirement to offer inflation protection), except that any requirement for a signature on a rejection of inflation protection shall permit the signature to be on an application or on a separate form.

“(XI) Section 23 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

“(ii) MODEL ACT.—The following requirements of the model Act:

“(I) Section 6C (relating to preexisting conditions).

“(II) Section 6D (relating to prior hospitalization).

“(B) DEFINITIONS.—For purposes of this paragraph—

“(i) MODEL PROVISIONS.—The terms ‘model regulation’ and ‘model Act’ mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of January 1993).

“(ii) COORDINATION.—Any provision of the model regulation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision.

“(3) DISCLOSURE REQUIREMENT.—The requirement of this paragraph is met with respect to any policy if such policy meets the requirements of section 4980C(d)(1).

“(4) NONFORFEITURE REQUIREMENTS.—

"(A) In general.—The requirements of this paragraph are met with respect to any level premium long-term care insurance policy, if the issuer of such policy offers to the policyholder, including any group policyholder, a nonforfeiture provision meeting the requirements of subparagraph (B).

"(B) Requirements of provision.—The nonforfeiture provision required under subparagraph (A) shall meet the following requirements:

"(i) The nonforfeiture provision shall be appropriately captioned.

"(ii) The nonforfeiture provision shall provide for a benefit available in the event of a default in the payment of any premiums and the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying policies approved by the Secretary for the same policy form.

"(iii) The nonforfeiture provision shall provide at least one of the following:

"(I) Reduced paid-up insurance.

"(II) Extended term insurance.

"(III) Shortened benefit period.

"(IV) Other similar offerings approved by the Secretary.

"(5) Long-term care insurance policy defined.—For purposes of this subsection, the term 'long-term care insurance policy' has the meaning given such term by section 4980C(e).".

SEC. 11052. REQUIREMENTS FOR ISSUERS OF LONG-TERM CARE INSURANCE POLICIES.

(a) In General.—Chapter 43 is amended by adding at the end the following new section:

"SEC. 4980C. REQUIREMENTS FOR ISSUERS OF LONG-TERM CARE INSURANCE POLICIES.

"(a) General Rule.—There is hereby imposed on any person failing to meet the requirements of subsection (c) or (d) a tax in the amount determined under subsection (b).

"(b) Amount.—

"(1) In general.—The amount of the tax imposed by subsection (a) shall be $100 per policy for each day any requirements of subsection (c) or (d) are not met with respect to each long-term care insurance policy.

"(2) Waiver.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that payment of the tax would be excessive relative to the failure involved.

"(c) Responsibilities.—The requirements of this subsection are as follows:

"(1) Requirements of model provisions.—

"(A) Model regulation.—The following requirements of the model regulation must be met:

“(i) Section 13 (relating to application forms and replacement coverage).

“(ii) Section 14 (relating to reporting requirements), except that the issuer shall also report at least annually the number of claims denied during the reporting period for each class of business (expressed as a percentage of claims denied), other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition.

“(iii) Section 20 (relating to filing requirements for marketing).

“(iv) Section 21 (relating to standards for marketing), including inaccurate completion of medical histories, other than sections 21C(1) and 21C(6) thereof, except that—

“(I) in addition to such requirements, no person shall, in selling or offering to sell a long-term care insurance policy, misrepresent a material fact; and

“(II) no such requirements shall include a requirement to inquire or identify whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance.

“(v) Section 22 (relating to appropriateness of recommended purchase).

“(vi) Section 24 (relating to standard format outline of coverage).

“(vii) Section 25 (relating to requirement to deliver shopper's guide).

“(B) MODEL ACT.—The following requirements of the model Act must be met:

“(i) Section 6F (relating to right to return), except that such section shall also apply to denials of applications and any refund shall be made within 30 days of the return or denial.

“(ii) Section 6G (relating to outline of coverage).

“(iii) Section 6H (relating to requirements for certificates under group plans).

“(iv) Section 6I (relating to policy summary).

“(v) Section 6J (relating to monthly reports on accelerated death benefits).

“(vi) Section 7 (relating to incontestability period).

“(C) DEFINITIONS.—For purposes of this paragraph, the terms ‘model regulation’ and ‘model Act’ have the meanings given such terms by section 7702B(f)(2)(B).

“(2) DELIVERY OF POLICY.—If an application for a long-term care insurance policy (or for a certificate under a group long-term care insurance policy) is approved, the issuer shall deliver to the applicant (or policyholder or certificateholder) the policy (or certificate) of insurance not later than 30 days after the date of the approval.

“(3) INFORMATION ON DENIALS OF CLAIMS.—If a claim under a long-term care insurance policy is denied, the issuer

shall, within 60 days of the date of a written request by the policyholder or certificateholder (or representative)—

"(A) provide a written explanation of the reasons for the denial, and

"(B) make available all information directly relating to such denial.

"(d) DISCLOSURE.—The requirements of this subsection are met if the issuer of a long-term care insurance policy discloses in such policy and in the outline of coverage required under subsection (c)(1)(B)(ii) that the policy is intended to be a qualified long-term care insurance contract under section 7702B(b).

"(e) LONG-TERM CARE INSURANCE POLICY DEFINED.—For purposes of this section, the term 'long-term care insurance policy' means any product which is advertised, marketed, or offered as long-term care insurance.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 43 is amended by adding at the end the following new item:

"Sec. 4980C. Requirements for issuers of long-term care insurance policies.".

SEC. 11053. COORDINATION WITH STATE REQUIREMENTS.

Nothing in this part shall prevent a State from establishing, implementing, or continuing in effect standards related to the protection of policyholders of long-term care insurance policies (as defined in section 4980C(e) of the Internal Revenue Code of 1986), if such standards are not in conflict with or inconsistent with the standards established under such Code.

SEC. 11054. EFFECTIVE DATES.

(a) IN GENERAL.—The provisions of, and amendments made by, this part shall apply to contracts issued after December 31, 1995. The provisions of section 11041(g) of this Act (relating to transition rule) shall apply to such contracts.

(b) ISSUERS.—The amendments made by section 11052 shall apply to actions taken after December 31, 1995.

Subchapter B—Treatment of Accelerated Death Benefits

SEC. 11061. TREATMENT OF ACCELERATED DEATH BENEFITS BY RECIPIENT.

(a) IN GENERAL.—Section 101 (relating to certain death benefits) is amended by adding at the end the following new subsection:

"(g) TREATMENT OF CERTAIN ACCELERATED DEATH BENEFITS.—

"(1) IN GENERAL.—For purposes of this section, the following amounts shall be treated as an amount paid by reason of the death of an insured:

"(A) Any amount received under a life insurance contract on the life of an insured who is a terminally ill individual.

"(B) Any amount received under a life insurance contract on the life of an insured who is a chronically ill individual (as determined in such manner as the Secretary may prescribe) but only if such amount is received under a rider or other provision of such contract which is treated as a qualified long-term care insurance contract under section 7702B.

"(2) TREATMENT OF VIATICAL SETTLEMENTS.—

"(A) IN GENERAL.—In the case of a life insurance contract on the life of an insured described in paragraph (1), if—

"(i) any portion of such contract is sold to any viatical settlement provider, or

"(ii) any portion of the death benefit is assigned to such a provider,

the amount paid for such sale or assignment shall be treated as an amount paid under the life insurance contract by reason of the death of such insured.

"(B) VIATICAL SETTLEMENT PROVIDER.—The term 'viatical settlement provider' means any person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds described in paragraph (1) if—

"(i) such person is licensed for such purposes in the State in which the insured resides, or

"(ii) in the case of an insured who resides in a State not requiring the licensing of such persons for such purposes—

"(I) such person meets the requirements of sections 8 and 9 of the Viatical Settlements Model Act of the National Association of Insurance Commissioners, and

"(II) meets the requirements of the Model Regulations of the National Association of Insurance Commissioners (relating to standards for evaluation of reasonable payments) in determining amounts paid by such person in connection with such purchases or assignments.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) TERMINALLY ILL INDIVIDUAL.—The term 'terminally ill individual' means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification.

"(B) PHYSICIAN.—The term 'physician' has the meaning given to such term by section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)(1)).

"(4) EXCEPTION FOR BUSINESS-RELATED POLICIES.—This subsection shall not apply in the case of any amount paid to any taxpayer other than the insured if such taxpayer has an insurable interest with respect to the life of the insured by reason of the insured being a director, officer, or employee of the taxpayer or by reason of the insured being financially interested in any trade or business carried on by the taxpayer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts received after December 31, 1995.

SEC. 11062. TAX TREATMENT OF COMPANIES ISSUING QUALIFIED ACCELERATED DEATH BENEFIT RIDERS.

(a) QUALIFIED ACCELERATED DEATH BENEFIT RIDERS TREATED AS LIFE INSURANCE.—Section 818 (relating to other definitions and

special rules) is amended by adding at the end the following new subsection:

"(g) QUALIFIED ACCELERATED DEATH BENEFIT RIDERS TREATED AS LIFE INSURANCE.—For purposes of this part—

"(1) IN GENERAL.—Any reference to a life insurance contract shall be treated as including a reference to a qualified accelerated death benefit rider on such contract.

"(2) QUALIFIED ACCELERATED DEATH BENEFIT RIDERS.—For purposes of this subsection, the term 'qualified accelerated death benefit rider' means any rider on a life insurance contract if the only payments under the rider are payments meeting the requirements of section 101(g).

"(3) EXCEPTION FOR LONG-TERM CARE RIDERS.—Paragraph (1) shall not apply to any rider which is treated as a long-term care insurance contract under section 7702B."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall take effect on January 1, 1996.

(2) ISSUANCE OF RIDER NOT TREATED AS MATERIAL CHANGE.—For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract—

(A) the issuance of a qualified accelerated death benefit rider (as defined in section 818(g) of such Code (as added by this Act)), and

(B) the addition of any provision required to conform an accelerated death benefit rider to the requirements of such section 818(g),

shall not be treated as a modification or material change of such contract.

CHAPTER 2—MEDICAL SAVINGS ACCOUNTS

SEC. 11066. MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. MEDICAL SAVINGS ACCOUNTS.

"(a) DEDUCTION ALLOWED.—In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to a medical savings account of such individual.

"(b) LIMITATIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed—

"(A) except as provided in subparagraph (B), the lesser of—

"(i) $2,000, or

"(ii) the annual deductible limit for any individual covered under the high deductible health plan, or

"(B) in the case of a high deductible health plan covering the taxpayer and any other eligible individual who is the spouse or any dependent (as defined in section 152) of the taxpayer, the lesser of—

"(i) $4,000, or

"(ii) the annual limit under the plan on the aggregate amount of deductibles required to be paid by all individuals.

The preceding sentence shall not apply if the spouse of such individual is covered under any other high deductible health plan.

"(2) SPECIAL RULE FOR MARRIED INDIVIDUALS.—

"(A) IN GENERAL.—This subsection shall be applied separately for each married individual.

"(B) SPECIAL RULE.—If individuals who are married to each other are covered under the same high deductible health plan, then the amounts applicable under paragraph (1)(B) shall be divided equally between them unless they agree on a different division.

"(3) COORDINATION WITH EXCLUSION FOR EMPLOYER CONTRIBUTIONS.—No deduction shall be allowed under this section for any amount paid for any taxable year to a medical savings account of an individual if—

"(A) any amount is paid to any medical savings account of such individual which is excludable from gross income under section 106(b) for such year, or

"(B) in a case described in paragraph (2), any amount is paid to any medical savings account of either spouse which is so excludable for such year.

"(4) PRORATION OF LIMITATION.—

"(A) IN GENERAL.—The limitation under paragraph (1) shall be the sum of the monthly limitations for months during the taxable year that the individual is an eligible individual if—

"(i) such individual is not an eligible individual for all months of the taxable year,

"(ii) the deductible under the high deductible health plan covering such individual is not the same throughout such taxable year, or

"(iii) such limitation is determined under paragraph (1)(B) for some but not all months during such taxable year.

"(B) MONTHLY LIMITATION.—The monthly limitation for any month shall be an amount equal to 1/12 of the limitation which would (but for this paragraph and paragraph (3)) be determined under paragraph (1) if the facts and circumstances as of the first day of such month that such individual is covered under a high deductible health plan were true for the entire taxable year.

"(5) DENIAL OF DEDUCTION TO DEPENDENTS.—No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means, with respect to any month, any individual—

"(i) who is covered under a high deductible health plan as of the 1st day of such month, and

"(ii) who is not, while covered under a high deductible health plan, covered under any health plan—

"(I) which is not a high deductible health plan, and

"(II) which provides coverage for any benefit which is covered under the high deductible health plan.

"(B) CERTAIN COVERAGE DISREGARDED.—Subparagraph (A)(ii) shall be applied without regard to—

"(i) coverage for any benefit provided by permitted insurance, and

"(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

"(2) HIGH DEDUCTIBLE HEALTH PLAN.—The term 'high deductible health plan' means a health plan which—

"(A) has an annual deductible limit for each individual covered by the plan which is not less than $1,500, and

"(B) has an annual limit on the aggregate amount of deductibles required to be paid with respect to all individuals covered by the plan which is not less than $3,000.

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

"(3) PERMITTED INSURANCE.—The term 'permitted insurance' means—

"(A) Medicare supplemental insurance,

"(B) insurance if substantially all of the coverage provided under such insurance relates to—

"(i) liabilities incurred under workers' compensation laws,

"(ii) tort liabilities,

"(iii) liabilities relating to ownership or use of property, or

"(iv) such other similar liabilities as the Secretary may specify by regulations,

"(C) insurance for a specified disease or illness, and

"(D) insurance paying a fixed amount per day (or other period) of hospitalization.

"(d) MEDICAL SAVINGS ACCOUNT.—For purposes of this section—

"(1) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

"(A) Except in the case of a rollover contribution described in subsection (f)(5), no contribution will be accepted—

"(i) unless it is in cash, or

"(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds $4,000.

"(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) No part of the trust assets will be invested in life insurance contracts.

"(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(E) The interest of an individual in the balance in his account is nonforfeitable.

"(2) QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The term 'qualified medical expenses' means, with respect to an account holder, amounts paid by such holder for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise.

"(B) HEALTH INSURANCE MAY NOT BE PURCHASED FROM ACCOUNT.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to any payment for insurance.

"(ii) EXCEPTIONS.—Clause (i) shall not apply to any expense for coverage under—

"(I) a health plan during any period of continuation coverage required under any Federal law,

"(II) a qualified long-term care contract (as defined in section 7702B), or

"(III) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law.

"(3) ACCOUNT HOLDER.—The term 'account holder' means the individual on whose behalf the medical savings account was established.

"(4) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

"(A) Section 219(d)(2) (relating to no deduction for rollovers).

"(B) Section 219(f)(3) (relating to time when contributions deemed made).

"(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

"(D) Section 408(g) (relating to community property laws).

"(E) Section 408(h) (relating to custodial accounts).

"(e) TAX TREATMENT OF ACCOUNTS.—

"(1) IN GENERAL.—A medical savings account is exempt from taxation under this subtitle unless such account has ceased to be a medical savings account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

"(2) ACCOUNT TERMINATIONS.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to medical savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

"(f) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) AMOUNTS USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—Any amount paid or distributed out of a medical savings account which is used exclusively to pay qualified medical expenses of any account holder (or any spouse or dependent of the holder) shall not be includible in gross income.

"(B) TREATMENT AFTER DEATH OF ACCOUNT HOLDER.—

"(i) TREATMENT IF HOLDER IS SPOUSE.—If, after the death of the account holder, the account holder's interest is payable to (or for the benefit of) the holder's spouse, the medical savings account shall be treated as if the spouse were the account holder.

"(ii) TREATMENT IF DESIGNATED HOLDER IS NOT SPOUSE.—In the case of an account holder's interest in a medical savings account which is payable to (or for the benefit of) any person other than such holder's spouse upon the death of such holder—

"(I) such account shall cease to be a medical savings account as of the date of death, and

"(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such holder, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's gross income for the last taxable year of such holder.

"(2) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—Any amount paid or distributed out of a medical savings account which is not used exclusively to pay the qualified medical expenses of the account holder or of the spouse or dependents of such holder shall be included in the gross income of such holder.

"(B) SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) all medical savings accounts of the account holder shall be treated as 1 account,

"(ii) all payments and distributions during any taxable year shall be treated as 1 distribution, and

"(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

"(3) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (2) shall not apply to the distribution of any contribution paid during a taxable year to a medical savings account to the extent that such contribution exceeds the amount under subsection (d)(1)(A)(ii) if—

"(A) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

"(B) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (B) shall be included in the gross income of the individual for the taxable year in which it is received.

"(4) PENALTY FOR DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The tax imposed by this chapter on the account holder for any taxable year in which there is a payment or distribution from a medical savings account of such holder which is includible in gross income under paragraph (2) shall be increased by 10 percent of the amount which is so includible.

"(B) EXCEPTION FOR DISABILITY OR DEATH.—Subparagraph (A) shall not apply if the payment or distribution is made after the account holder becomes disabled within the meaning of section 72(m)(7) or dies.

"(C) EXCEPTION FOR DISTRIBUTIONS AFTER AGE 59½.—Subparagraph (A) shall not apply to any payment or distribution after the date on which the account holder attains age 59½.

"(5) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) IN GENERAL.—Paragraph (2) shall not apply to any amount paid or distributed from a medical savings account to the account holder to the extent the amount received is paid into a medical savings account for the benefit of such holder not later than the 60th day after the day on which the holder receives the payment or distribution.

"(B) LIMITATION.—This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from a medical savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from a medical savings account which was not includible in the individual's gross income because of the application of this paragraph.

"(6) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—For purposes of determining the amount of the deduction under section 213, any payment or distribution out of a medical savings account for qualified medical expenses shall not be treated as an expense paid for medical care.

"(7) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in a medical savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as a medical savings account with respect to which the spouse is the account holder.

"(g) COST-OF-LIVING ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1996, each dollar amount in subsection (b)(1), (c)(2), or (d)(1)(A) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the medical care cost adjustment for such calendar year.

If any increase under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

"(2) MEDICAL CARE COST ADJUSTMENT.—For purposes of paragraph (1), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

"(A) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

"(B) such component for August of 1995.

"(h) REPORTS.—The Secretary may require the trustee of a medical savings account to make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations."

(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (18) the following new paragraph:

"(19) MEDICAL SAVINGS ACCOUNTS.—The deduction allowed by section 222."

(c) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

(1) EXCLUSION FROM INCOME TAX.—Section 106 (relating to contributions by employer to accident and health plans), as amended by this Act, is amended—

(A) by adding at the end the following new subsection:

"(c) CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

"(1) IN GENERAL.—In the case of an employee who is an eligible individual, gross income does not include amounts con-

tributed by such employee's employer to any medical savings account of such employee.

"(2) COORDINATION WITH DEDUCTION LIMITATION.—The amount excluded from the gross income of an employee under this subsection for any taxable year shall not exceed the limitation under section 222(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

"(3) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

"(4) SPECIAL RULE FOR DEDUCTION OF EMPLOYER CONTRIBUTIONS.—Any employer contribution to a medical savings account, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

"(5) DEFINITIONS.—For purposes of this subsection, the terms 'eligible individual' and 'medical savings account' have the respective meanings given to such terms by section 222", and

(B) by striking "subsection (b)" in subsection (a) and inserting "this subsection".

(2) EXCLUSION FROM WITHHOLDING TAX.—Subsection (a) of section 3401 is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by inserting after paragraph (20) the following new paragraph:

"(21) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(d) MEDICAL SAVINGS ACCOUNT CONTRIBUTIONS NOT AVAILABLE UNDER CAFETERIA PLANS.—Subsection (f) of section 125 is amended by inserting "106(b)," before "117".

(e) EXCLUSION OF MEDICAL SAVINGS ACCOUNTS FROM ESTATE TAX.—Part IV of subchapter A of chapter 11 is amended by adding at the end the following new section:

"SEC. 2057. MEDICAL SAVINGS ACCOUNTS.

"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 the value of any medical savings account (as defined in section 222(d)) included in the gross estate."

(f) TAX ON EXCESS CONTRIBUTIONS.—Section 4973 (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended—

*(1) by inserting **"MEDICAL SAVINGS ACCOUNTS,"** after **"ACCOUNTS,"** in the heading of such section,*

(2) by striking "or" at the end of paragraph (1) of subsection (a),

(3) by redesignating paragraph (2) of subsection (a) as paragraph (3) and by inserting after paragraph (1) the following:

"(2) a medical savings account (within the meaning of section 222(d)), or", and

(4) by adding at the end the following new subsection:

"(d) EXCESS CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—For purposes of this section, in the case of a medical savings account (within the meaning of section 222(d)), the term 'excess contributions' means the sum of—

"(1) the amount by which the amount contributed for the taxable year to the account exceeds the amount which may be contributed to the account under section 222(d)(1)(B)(ii) for such taxable year, and

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of distributions out of the account included in gross income under section 222(f) (2) or (3) and the excess (if any) of the maximum amount allowable as a deduction under section 222 for the taxable year over the amount contributed.

For purposes of this subsection, any contribution which is distributed out of the medical savings account in a distribution to which section 222(f)(3) applies shall be treated as an amount not contributed."

(g) TAX ON PROHIBITED TRANSACTIONS.—

(1) Section 4975 (relating to tax on prohibited transactions) is amended by adding at the end of subsection (c) the following new paragraph:

"(4) SPECIAL RULE FOR MEDICAL SAVINGS ACCOUNTS.—An individual for whose benefit a medical savings account (within the meaning of section 222(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 222(e)(2) to such account."

(2) Paragraph (1) of section 4975(e) is amended to read as follows:

"(1) PLAN.—For purposes of this section, the term 'plan' means—

"(A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a),

"(B) an individual retirement account described in section 408(a),

"(C) an individual retirement annuity described in section 408(b),

"(D) a medical savings account described in section 220(d), or

"(E) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph."

(h) FAILURE TO PROVIDE REPORTS ON MEDICAREPLUS MSA'S.—

(1) Subsection (a) of section 6693 (relating to failure to provide reports on individual retirement accounts or annuities) is amended to read as follows:

"(a) REPORTS.—

"(1) IN GENERAL.—If a person required to file a report under a provision referred to in paragraph (2) fails to file such report at the time and in the manner required by such provision, such person shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause.

"(2) PROVISIONS.—The provisions referred to in this paragraph are—

"(A) subsections (i) and (l) of section 408 (relating to individual retirement plans), and

"(B) section 222(h) (relating to medical savings accounts)."

(i) EXCEPTION FROM CAPITALIZATION OF POLICY ACQUISITION EXPENSES.—Subparagraph (B) of section 848(e)(1) (defining specified insurance contract) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) any contract which is a medical savings account (as defined in section 222(d)).".

(j) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following:

"Sec. 222. Medical savings accounts.
"Sec. 223. Cross reference."

(k) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

CHAPTER 3—INCREASE IN DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

SEC. 11068. INCREASE IN DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) is amended to read as follows:

"(1) ALLOWANCE OF DEDUCTION.—

"(A) IN GENERAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the applicable percentage of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined under the following table:

"For taxable years beginning in calendar year—	***The applicable percentage is—***
1996 or 1997	*30*
1998 or 1999	*35*
2000 or 2001	*40*
2002 or thereafter	*50."*

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1995.

Subtitle D—Estate and Gift Provisions

SEC. 11071. COST-OF-LIVING ADJUSTMENTS RELATING TO ESTATE AND GIFT TAX PROVISIONS.

(a) INCREASE IN UNIFIED ESTATE AND GIFT TAX CREDIT.—

(1) ESTATE TAX CREDIT.—

(A) Subsection (a) of section 2010 (relating to unified credit against estate tax) is amended by striking "$192,800" and inserting "the applicable credit amount".

(B) Section 2010 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) APPLICABLE CREDIT AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The applicable credit amount is the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the applicable exclusion amount determined in accordance with the following table:

"In the case of estates of decedents dying, and gifts made, during:	*The applicable exclusion amount is:*
1996	*$625,000*
1997	*$650,000*
1998	*$675,000*
1999	*$700,000*
2000	*$725,000*
2001 or thereafter	*$750,000.0*

"(2) COST-OF-LIVING ADJUSTMENTS.—In the case of any decedent dying, and gift made, in a calendar year after 2001, the $750,000 amount set forth in paragraph (1) shall be increased by an amount equal to—

"(A) $750,000, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2000' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000."

(C) Paragraph (1) of section 6018(a) is amended by striking "$600,000" and inserting "the applicable exclusion amount in effect under section 2010(c) (as adjusted under paragraph (2) thereof) for the calendar year which includes the date of death".

(D) Paragraph (2) of section 2001(c) is amended by striking "$21,040,000" and inserting "the amount at which the average tax rate under this section is 55 percent".

(E) Subparagraph (A) of section 2102(c)(3) is amended by striking "$192,800" and inserting "the applicable credit

amount in effect under section 2010(c) for the calendar year which includes the date of death''.

(2) UNIFIED GIFT TAX CREDIT.—Paragraph (1) of section 2505(a) is amended by striking ''$192,800'' and inserting ''the applicable credit amount in effect under section 2010(c) for such calendar year''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying, and gifts made, after December 31, 1995.

(b) ALTERNATE VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.—Subsection (a) of section 2032A is amended by adding at the end the following new paragraph:

''(3) INFLATION ADJUSTMENT.—In the case of estates of decedents dying in a calendar year after 2000, the $750,000 amount contained in paragraph (2) shall be increased by an amount equal to—

''(A) $750,000, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''

(c) ANNUAL GIFT TAX EXCLUSION.—Subsection (b) of section 2503 is amended—

(1) by striking the subsection heading and inserting the following:

''(b) EXCLUSIONS FROM GIFTS.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

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

''(2) INFLATION ADJUSTMENT.—In the case of gifts made in a calendar year after 2000, the $10,000 amount contained in paragraph (1) shall be increased by an amount equal to—

''(A) $10,000, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.''

(d) EXEMPTION FROM GENERATION-SKIPPING TAX.—Section 2631 (relating to GST exemption) is amended by adding at the end the following new subsection:

''(c) INFLATION ADJUSTMENT.—In the case of an individual who dies in any calendar year after 2000, the $1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

''(1) $1,000,000, multiplied by

''(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''

(e) AMOUNT OF TAX ELIGIBLE FOR 4 PERCENT INTEREST RATE ON EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX ON CLOSELY HELD BUSINESS.—

(1) Subparagraph (A) of section 6601(j)(2) is amended by striking ''$345,800'' and inserting ''the applicable limitation amount''.

(2) Subsection (j) of section 6601 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) APPLICABLE LIMITATION AMOUNT.—

''(A) IN GENERAL.—For purposes of paragraph (2), the applicable limitation amount is the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were $1,000,000.

''(B) INFLATION ADJUSTMENT.—In the case of estates of decedents dying in a calendar year after 2000, the $1,000,000 amount contained in subparagraph (A) shall be increased by an amount equal to—

''(i) $1,000,000, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''

SEC. 11072. FAMILY-OWNED BUSINESS EXCLUSION.

(a) IN GENERAL.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2033 the following new section:

''SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.

''(a) IN GENERAL.—In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

''(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

''(2) the sum of—

''(A) $1,000,000, plus

''(B) 50 percent of the excess (if any) of the adjusted value of such interests over $1,000,000, but not over $2,500,000.

''(b) ESTATES TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to an estate if—

''(A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

''(B) the sum of—

"(i) the adjusted value of the qualified family-owned business interests described in paragraph (2), plus

"(ii) the amount of the gifts of such interests determined under paragraph (3),

exceeds 50 percent of the adjusted gross estate, and

"(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

"(i) such interests were owned by the decedent or a member of the decedent's family, and

"(ii) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

"(2) INCLUDIBLE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—The qualified family-owned business interests described in this paragraph are the interests which—

"(A) are included in determining the value of the gross estate (without regard to this section), and

"(B) are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

"(3) INCLUDIBLE GIFTS OF INTERESTS.—The amount of the gifts of qualified family-owned business interests determined under this paragraph is the excess of—

"(A) the sum of—

"(i) the amount of such gifts from the decedent to members of the decedent's family taken into account under subsection 2001(b)(1)(B), plus

"(ii) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death, over

"(B) the amount of such gifts from the decedent to members of the decedent's family otherwise included in the gross estate.

"(c) ADJUSTED GROSS ESTATE.—For purposes of this section, the term 'adjusted gross estate' means the value of the gross estate (determined without regard to this section)—

"(1) reduced by any amount deductible under paragraph (3) or (4) of section 2053(a), and

"(2) increased by the excess of—

"(A) the sum of—

"(i) the amount of gifts determined under subsection (b)(3), plus

"(ii) the amount (if more than de minimis) of other transfers from the decedent to the decedent's spouse (at the time of the transfer) within 10 years of the date of the decedent's death, plus

"(iii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of

such date, other than gifts to members of the decedent's family otherwise excluded under section 2503(b), over

"(B) the sum of the amounts described in clauses (i), (ii), and (iii) of subparagraph (A) which are otherwise includible in the gross estate.

For purposes of the preceding sentence, the Secretary may provide that de minimis gifts to persons other than members of the decedent's family shall not be taken into account.

"(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

"(1) any amount deductible under paragraph (3) or (4) of section 2053(a), over

"(2) the sum of—

"(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

"(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152), plus

"(C) any indebtedness not described in clause (i) or (ii), to the extent such indebtedness does not exceed $10,000.

"(e) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified family-owned business interest' means—

"(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

"(B) an interest in an entity carrying on a trade or business, if—

"(i) at least—

"(I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,

"(II) 70 percent of such entity is so owned by members of 2 families, or

"(III) 90 percent of such entity is so owned by members of 3 families, and

"(ii) for purposes of subclause (II) or (III) of clause (i), at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

"(2) LIMITATION.—Such term shall not include—

"(A) any interest in a trade or business the principal place of business of which is not located in the United States,

"(B) any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years of the date of the decedent's death,

"(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a)),

"(D) that portion of an interest in a trade or business that is attributable to—

"(i) cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business, and

"(ii) any other assets of the trade or business (other than assets used in the active conduct of a trade or business described in section 542(c)(2)), the income of which is described in section 543(a) or in subparagraph (B), (C), (D), or (E) of section 954(c)(1) (determined by substituting 'trade or business' for 'controlled foreign corporation').

"(3) RULES REGARDING OWNERSHIP.—

"(A) OWNERSHIP OF ENTITIES.—For purposes of paragraph (1)(B)—

"(i) CORPORATIONS.—Ownership of a corporation shall be determined by the holding of stock possessing the appropriate percentage of the total combined voting power of all classes of stock entitled to vote and the appropriate percentage of the total value of shares of all classes of stock.

"(ii) PARTNERSHIPS.—Ownership of a partnership shall be determined by the owning of the appropriate percentage of the capital interest in such partnership.

"(B) OWNERSHIP OF TIERED ENTITIES.—For purposes of this section, if by reason of holding an interest in a trade or business, a decedent, any member of the decedent's family, any qualified heir, or any member of any qualified heir's family is treated as holding an interest in any other trade or business—

"(i) such ownership interest in the other trade or business shall be disregarded in determining if the ownership interest in the first trade or business is a qualified family-owned business interest, and

"(ii) this section shall be applied separately in determining if such interest in any other trade or business is a qualified family-owned business interest.

"(C) INDIVIDUAL OWNERSHIP RULES.—For purposes of this section, an interest owned, directly or indirectly, by or for an entity described in paragraph (1)(B) shall be considered as being owned proportionately by or for the entity's shareholders, partners, or beneficiaries. A person shall be treated as a beneficiary of any trust only if such person has a present interest in such trust.

"(f) TAX TREATMENT OF FAILURE TO MATERIALLY PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTERESTS.—

"(1) IN GENERAL.—There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

"(A) the material participation requirements described in section 2032A(c)(6)(B) are not met with respect to the qualified family-owned business interest which was acquired (or passed) from the decedent,

"(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)),

"(C) the qualified heir loses United States citizenship (within the meaning of section 877) or with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) occurs, and such heir does not comply with the requirements of subsection (g), or

"(D) the principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

"(2) ADDITIONAL ESTATE TAX.—

"(A) IN GENERAL.—The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

"(i) the applicable percentage of the adjusted tax difference attributable to the qualified family-owned business interest (as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

"(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

"(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined under the following table:

"If the event described in paragraph (1) occurs in the following year of material participation:	***The applicable percentage is:***
1 through 6	*100*
7	*80*
8	*60*
9	*40*
10	*20.*

"(g) SECURITY REQUIREMENTS FOR NONCITIZEN QUALIFIED HEIRS.—

"(1) IN GENERAL.—Except upon the application of subparagraph (F) or (M) of subsection (h)(3), if a qualified heir is not a citizen of the United States, any interest under this section passing to or acquired by such heir (including any interest held by such heir at a time described in subsection (f)(1)(C)) shall be treated as a qualified family-owned business interest only if the interest passes or is acquired (or is held) in a qualified trust.

"(2) QUALIFIED TRUST.—The term 'qualified trust' means a trust—

“(A) which is organized under, and governed by, the laws of the United States or a State, and

“(B) except as otherwise provided in regulations, with respect to which the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation.

“(h) OTHER DEFINITIONS AND APPLICABLE RULES.—For purposes of this section—

“(1) QUALIFIED HEIR.—The term ‘qualified heir’—

“(A) has the meaning given to such term by section 2032A(e)(1), and

“(B) includes any active employee of the trade or business to which the qualified family-owned business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent’s death.

“(2) MEMBER OF THE FAMILY.—The term ‘member of the family’ has the meaning given to such term by section 2032A(e)(2).

“(3) APPLICABLE RULES.—Rules similar to the following rules shall apply:

“(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

“(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

“(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

“(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

“(E) Section 2032A(c)(4) (relating to due date).

“(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

“(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treated as material participation).

“(H) Section 2032A(e)(10) (relating to community property).

“(I) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

“(J) Section 2032A(f) (relating to statute of limitations).

“(K) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

“(L) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).

“(M) Section 6324B (relating to special lien for additional estate tax).

“(4) COORDINATION WITH OTHER ESTATE TAX BENEFITS.—If there is a reduction in the value of the gross estate under this section—

“(A) the dollar limitation applicable under section 2032A(a)(2), and

“(B) the $1,000,000 amount under section 6601(j)(3) (as adjusted),

shall each be reduced (but not below zero) by the amount of such reduction.''.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by inserting after the item relating to section 2033 the following new item:

''Sec. 2033A. Family-owned business exclusion.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1995.

SEC. 11073. TREATMENT OF LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.

(a) ESTATE TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—Section 2031 (relating to the definition of gross estate) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) ESTATE TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—

''(1) IN GENERAL.—If the executor makes the election described in paragraph (4), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the applicable percentage of the lesser of—

''(A) the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

''(B) the excess (if any) of $5,000,000 over the lesser of—

''(i) $2,500,000, or

''(ii) the adjusted value of the qualified family-owned business interests of the decedent determined under section 2033A.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land (determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (4)).

''(3) TREATMENT OF CERTAIN INDEBTEDNESS.—

''(A) IN GENERAL.—The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) DEBT-FINANCED PROPERTY.—The term 'debt-financed property' means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

''(ii) ACQUISITION INDEBTEDNESS.—The term 'acquisition indebtedness' means, with respect to debt-financed property, the unpaid amount of—

''(I) the indebtedness incurred by the donor in acquiring such property,

''(II) the indebtedness incurred before the acquisition of such property if such indebtedness

would not have been incurred but for such acquisition,

"(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

"(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

"(4) TREATMENT OF RETAINED DEVELOPMENT RIGHT.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

"(B) TERMINATION OF RETAINED DEVELOPMENT RIGHT.—If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

"(C) ADDITIONAL TAX.—Any failure to implement the agreement described in subparagraph (B) not later than the earlier of—

"(i) the date which is 2 years after the date of the decedent's death, or

"(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

"(D) DEVELOPMENT RIGHT DEFINED.—For purposes of this paragraph, the term 'development right' means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 6420(c)).

"(4) ELECTION.—The election under this subsection shall be made on the return of the tax imposed by section 2001. Such an election, once made, shall be irrevocable.

"(5) CALCULATION OF ESTATE TAX DUE.—An executor making the election described in paragraph (4) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (3)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall

be done in such manner and on such forms as the Secretary shall prescribe.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—The term 'land subject to a qualified conservation easement' means land—

"(i) which is located—

"(I) in or within 25 miles of an area which, on the date of the decedent's death, is a metropolitan area (as defined by the Office of Management and Budget),

"(II) in or within 25 miles of an area which, on the date of the decedent's death, is a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or

"(III) in or within 10 miles of an area which, on the date of the decedent's death, is an Urban National Forest (as designated by the Forest Service),

"(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

"(iii) with respect to which a qualified conservation easement has been made by the decedent or a member of the decedent's family.

"(B) QUALIFIED CONSERVATION EASEMENT.—The term 'qualified conservation easement' means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on commercial recreational activity.

"(C) MEMBER OF FAMILY.—The term 'member of the decedent's family' means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

"(7) APPLICATION OF THIS SECTION TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2033A(e)(3).".

(b) CARRYOVER BASIS.—Section 1014(a) (relating to basis of property acquired from a decedent) is amended by striking the period at the end of paragraph (3) and inserting ", or" and by adding after paragraph (3) the following new paragraph:

"(4) to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.".

(c) QUALIFIED CONSERVATION CONTRIBUTION IS NOT A DISPOSITION.—Subsection (c) of section 2032A (relating to alternative valuation method) is amended by adding at the end the following new paragraph:

"(8) QUALIFIED CONSERVATION CONTRIBUTION IS NOT A DISPOSITION.—A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1995.

SEC. 11074. EXPANSION OF EXCEPTION FROM GENERATION-SKIPPING TRANSFER TAX FOR TRANSFERS TO INDIVIDUALS WITH DECEASED PARENTS.

(a) IN GENERAL.—Section 2651 (relating to generation assignment) is amended by redesignating subsection (e) as subsection (f), and by inserting after subsection (d) the following new subsection:

"(e) SPECIAL RULE FOR PERSONS WITH A DECEASED PARENT.—

"(1) IN GENERAL.—For purposes of determining whether any transfer is a generation-skipping transfer, if—

"(A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and

"(B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest such time),

such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

"(2) LIMITED APPLICATION OF SUBSECTION TO COLLATERAL HEIRS.—This subsection shall not apply with respect to a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if, at the time of the transfer, such transferor has any living lineal descendant."

(b) CONFORMING AMENDMENTS.—

(1) Section 2612(c) (defining direct skip) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) Section 2612(c)(2) (as so redesignated) is amended by striking "section 2651(e)(2)" and inserting "section 2651(f)(2)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to terminations, distributions, and transfers occurring after December 31, 1994.

SEC. 11075. EXTENSION OF TREATMENT OF CERTAIN RENTS UNDER SECTION 2032A TO LINEAL DESCENDANTS.

(a) GENERAL RULE.—Paragraph (7) of section 2032A(c) (relating to special rules for tax treatment of dispositions and failures to use

for qualified use) is amended by adding at the end the following new subparagraph:

"(E) CERTAIN RENTS TREATED AS QUALIFIED USE.—For purposes of this subsection, a surviving spouse or lineal descendant of the decedent shall not be treated as failing to use qualified real property in a qualified use solely because such spouse or descendant rents such property to a member of the family of such spouse or descendant on a net cash basis. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.".

(b) CONFORMING AMENDMENT.—Section 2032A(b)(5)(A) is amended by striking out the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to leases entered into after December 31, 1995.

Subtitle E—Extension of Expiring Provisions

CHAPTER 1—TEMPORARY EXTENSIONS

SEC. 11111. WORK OPPORTUNITY TAX CREDIT.

(a) AMOUNT OF CREDIT.—Subsection (a) of section 51 (relating to amount of credit) is amended by striking "40 percent" and inserting "35 percent".

(b) MEMBERS OF TARGETED GROUPS.—Subsection (d) of section 51 is amended to read as follows:

"(d) MEMBERS OF TARGETED GROUPS.—For purposes of this subpart—

"(1) IN GENERAL.—An individual is a member of a targeted group if such individual is—

"(A) a qualified IV–A recipient,

"(B) a qualified veteran,

"(C) a qualified ex-felon,

"(D) a high-risk youth,

"(E) a vocational rehabilitation referral, or

"(F) a qualified summer youth employee.

"(2) QUALIFIED IV–A RECIPIENT.—

"(A) IN GENERAL.—The term 'qualified IV–A recipient' means any individual who is certified by the designated local agency as being a member of a family receiving assistance under a IV–A program for at least a 9-month period ending during the 9-month period ending on the hiring date.

"(B) IV–A PROGRAM.—For purposes of this paragraph, the term 'IV–A program' means any program providing assistance under a State plan approved under part A of title IV of the Social Security Act (relating to assistance for needy families with minor children) and any successor of such program.

"(3) QUALIFIED VETERAN.—

"(A) IN GENERAL.—The term 'qualified veteran' means any veteran who is certified by the designated local agency as being—

"(i) a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least a 9-month period ending during the 12-month period ending on the hiring date, or

"(ii) a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for at least a 3-month period ending during the 12-month period ending on the hiring date.

"(B) VETERAN.—For purposes of subparagraph (A), the term 'veteran' means any individual who is certified by the designated local agency as—

"(i)(I) having served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or

"(II) having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability, and

"(ii) not having any day during the 60-day period ending on the hiring date which was a day of extended active duty in the Armed Forces of the United States.

For purposes of clause (ii), the term 'extended active duty' means a period of more than 90 days during which the individual was on active duty (other than active duty for training).

"(4) QUALIFIED EX-FELON.—The term 'qualified ex-felon' means any individual who is certified by the designated local agency—

"(A) as having been convicted of a felony under any statute of the United States or any State,

"(B) as having a hiring date which is not more than 1 year after the last date on which such individual was so convicted or was released from prison, and

"(C) as being a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such income determination occurs or the month in which the hiring date occurs, which, on an annual basis, would be 70 percent or less of the Bureau of Labor Statistics lower living standard.

Any determination under subparagraph (C) shall be valid for the 45-day period beginning on the date such determination is made.

"(5) HIGH-RISK YOUTH.—

"(A) IN GENERAL.—The term 'high-risk youth' means any individual who is certified by the designated local agency—

"(i) as having attained age 18 but not age 25 on the hiring date, and

"(ii) as having his principal place of abode within an empowerment zone or enterprise community.

"(B) YOUTH MUST CONTINUE TO RESIDE IN ZONE.—In the case of a high-risk youth, the term 'qualified wages'

shall not include wages paid or incurred for services performed while such youth's principal place of abode is outside an empowerment zone or enterprise community.

"(6) VOCATIONAL REHABILITATION REFERRAL.—The term 'vocational rehabilitation referral' means any individual who is certified by the designated local agency as—

"(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

"(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

"(i) an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

"(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

"(7) QUALIFIED SUMMER YOUTH EMPLOYEE.—

"(A) IN GENERAL.—The term 'qualified summer youth employee' means any individual—

"(i) who performs services for the employer between May 1 and September 15,

"(ii) who is certified by the designated local agency as having attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved),

"(iii) who has not been an employee of the employer during any period prior to the 90-day period described in subparagraph (B)(i), and

"(iv) who is certified by the designated local agency as having his principal place of abode within an empowerment zone or enterprise community.

"(B) SPECIAL RULES FOR DETERMINING AMOUNT OF CREDIT.—For purposes of applying this subpart to wages paid or incurred to any qualified summer youth employee—

"(i) subsection (b)(2) shall be applied by substituting 'any 90-day period between May 1 and September 15' for 'the 1-year period beginning with the day the individual begins work for the employer', and

"(ii) subsection (b)(3) shall be applied by substituting '$3,000' for '$6,000'.

The preceding sentence shall not apply to an individual who, with respect to the same employer, is certified as a member of another targeted group after such individual has been a qualified summer youth employee.

"(C) YOUTH MUST CONTINUE TO RESIDE IN ZONE.—Paragraph (5)(B) shall apply for purposes of this paragraph.

"(8) HIRING DATE.—The term 'hiring date' means the day the individual is hired by the employer.

"(9) DESIGNATED LOCAL AGENCY.—The term 'designated local agency' means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49–49n).

"(10) SPECIAL RULES FOR CERTIFICATIONS.—

"(A) IN GENERAL.—An individual shall not be treated as a member of a targeted group unless—

"(i) on or before the day on which such individual begins work for the employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group, or

"(ii)(I) on or before the day the individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to such individual, and

"(II) not later than the 14th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for such a certification from such agency.

For purposes of this paragraph, the term 'pre-screening notice' means a document (in such form as the Secretary shall prescribe) which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

"(B) INCORRECT CERTIFICATIONS.—If—

"(i) an individual has been certified by a designated local agency as a member of a targeted group, and

"(ii) such certification is incorrect because it was based on false information provided by such individual,

the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

"(C) EXPLANATION OF DENIAL OF REQUEST.—If a designated local agency denies a request for certification of membership in a targeted group, such agency shall provide to the person making such request a written explanation of the reasons for such denial."

(c) MINIMUM EMPLOYMENT PERIOD.—Paragraph (3) of section 51(i) (relating to certain individuals ineligible) is amended to read as follows:

"(3) INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIOD.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

"(A) is employed by the employer at least 180 days (20 days in the case of a qualified summer youth employee), or

"(B) has completed at least 500 hours (120 hours in the case of a qualified summer youth employee) of services performed for the employer."

(d) TERMINATION.—Paragraph (4) of section 51(c) (relating to wages defined) is amended to read as follows:

“(4) Termination.—The term ‘wages’ shall not include any amount paid or incurred to an individual who begins work for the employer—

“(A) after December 31, 1994, and before January 1, 1996, or

“(B) after December 31, 1996.”

(e) Redesignation of Credit.—

(1) Sections 38(b)(2) and 51(a) are each amended by striking “targeted jobs credit” and inserting “work opportunity credit”.

*(2) The subpart heading for subpart F of part IV of subchapter A of chapter 1 is amended by striking “**Targeted Jobs Credit**” and inserting “**Work Opportunity Credit**”.*

(3) The table of subparts for such part IV is amended by striking “targeted jobs credit” and inserting “work opportunity credit”.

(4) The heading for paragraph (3) of section 1396(c) is amended by striking “targeted jobs credit” and inserting “work opportunity credit”.

(f) Technical Amendments.—

(1) Paragraph (1) of section 51(c) is amended by striking “, subsection (d)(8)(D),”.

(2) Paragraph (3) of section 51(i) is amended by striking “(d)(12)” each place it appears and inserting “(d)(6)”.

(g) Effective Date.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 1995.

SEC. 11112. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE PROGRAMS.

(a) Extension.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking “December 31, 1994” and inserting “December 31, 1996”.

(b) Limitation to Education Below Graduate Level.—The last sentence of section 127(c)(1) is amended by inserting before the period “or at the graduate level”.

(c) Effective Dates.—

(1) Extension.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1994.

(2) Limitation.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1995.

SEC. 11113. RESEARCH CREDIT.

(a) In General.—Subsection (h) of section 41 (relating to credit for research activities) is amended—

(1) by striking “June 30, 1995” each place it appears and inserting “December 31, 1996”, and

(2) by striking “July 1, 1995” each place it appears and inserting “January 1, 1997”.

(b) Base Amount for Start-up Companies.—Clause (i) of section 41(c)(3)(B) (relating to start-up companies) is amended to read as follows:

“(i) Taxpayers to which subparagraph applies.—The fixed-base percentage shall be determined under this subparagraph if—

"(I) the first taxable year in which a taxpayer had both gross receipts and qualified research expenses begins after December 31, 1983, or

"(II) there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.".

(c) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—Subsection (c) of section 41 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

"(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the sum of—

"(i) 1.65 percent of so much of the qualified research expenses for the taxable year as exceeds 1 percent of the average described in subsection (c)(1)(B) but does not exceed 1.5 percent of such average,

"(ii) 2.2 percent of so much of such expenses as exceeds 1.5 percent of such average but does not exceed 2 percent of such average, and

"(iii) 2.75 percent of so much of such expenses as exceeds 2 percent of such average.

"(B) ELECTION.—An election under this paragraph may be made only for the first taxable year of the taxpayer beginning after June 30, 1995. Such an election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary."

(d) INCREASED CREDIT FOR CONTRACT RESEARCH EXPENSES WITH RESPECT TO CERTAIN RESEARCH CONSORTIA.—Paragraph (3) of section 41(b) is amended by adding at the end the following new subparagraph:

"(C) AMOUNTS PAID TO CERTAIN RESEARCH CONSORTIA.—

"(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting '75 percent' for '65 percent' with respect to amounts paid or incurred by the taxpayer to a qualified research consortium for qualified research.

"(ii) QUALIFIED RESEARCH CONSORTIUM.—The term 'qualified research consortium' means any organization described in subsection (e)(6)(B) if—

"(I) at least 15 unrelated taxpayers paid (during the calendar year in which the taxable year of the taxpayer begins) amounts to such organization for qualified research,

"(II) no 3 persons paid during such calendar year more than 50 percent of the total amounts paid during such calendar year for qualified research, and

"(III) no person contributed more than 20 percent of such total amounts.

For purposes of subclause (I), all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related taxpayers.''

(e) CONFORMING AMENDMENT.—Subparagraph (D) of section 28(b)(1) is amended by striking ''June 30, 1995'' and inserting ''December 31, 1996''.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after June 30, 1995.

(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) shall apply to taxable years beginning after June 30, 1995.

SEC. 11114. ORPHAN DRUG TAX CREDIT.

(a) RECATEGORIZED AS A BUSINESS CREDIT.—

(1) IN GENERAL.—Section 28 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is transferred to subpart D of part IV of subchapter A of chapter 1, inserted after section 45B, and redesignated as section 45C.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 38 (relating to general business credit) is amended by striking ''plus'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', plus'', and by adding at the end the following new paragraph:

''(12) the orphan drug credit determined under section 45C(a).''.

(3) CLERICAL AMENDMENTS.—

(A) The table of sections for subpart B of such part IV is amended by striking the item relating to section 28.

(B) The table of sections for subpart D of such part IV is amended by adding at the end the following new item:

''Sec. 45C. Clinical testing expenses for certain drugs for rare diseases or conditions.''.

(b) CREDIT TERMINATION.—Subsection (e) of section 45C, as redesignated by subsection (a)(1), is amended by striking ''December 31, 1994'' and inserting ''December 31, 1996''.

(c) NO PRE-1995 CARRYBACKS.—Subsection (d) of section 39 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following new paragraph:

''(7) NO CARRYBACK OF SECTION 45C CREDIT BEFORE 1995.—No portion of the unused business credit for any taxable year which is attributable to the orphan drug credit determined under section 45C may be carried back to a taxable year beginning before January 1, 1995.''.

(d) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 45C(a), as redesignated by subsection (a)(1), is amended by striking ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year'' and inserting ''For purposes of section 38, the credit determined under this section for the taxable year is''.

(2) Section 45C(d), as so redesignated, is amended by striking paragraph (2) and by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4).

(3) Section 29(b)(6)(A) is amended by striking "sections 27 and 28" and inserting "section 27".

(4) Section 30(b)(3)(A) is amended by striking "sections 27, 28, and 29" and inserting "sections 27 and 29".

(5) Section 53(d)(1)(B) is amended—

(A) by striking "or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)," in clause (iii), and

(B) by striking "or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)" in clause (iv)(II).

(6) Section 55(c)(2) is amended by striking "28(d)(2),".

(7) Section 280C(b) is amended—

(A) by striking "section 28(b)" in paragraph (1) and inserting "section 45C(b)",

(B) by striking "section 28" in paragraphs (1) and (2)(A) and inserting "section 45C(b)", and

(C) by striking "subsection (d)(2) thereof" in paragraphs (1) and (2)(A) and inserting "section 38(c)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1994.

SEC. 11115. CONTRIBUTIONS OF STOCK TO PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Subparagraph (D) of section 170(e)(5) (relating to special rule for contributions of stock for which market quotations are readily available) is amended by striking "December 31, 1994" and inserting "December 31, 1996".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 1994.

SEC. 11116. DELAY OF TAX ON FUEL USED IN COMMERCIAL AVIATION.

(a) IN GENERAL.—Sections 4092(b)(2), 6421(f)(2)(B), and 6427(l)(4)(B) are each amended by striking "September 30, 1995" and inserting "September 30, 1997".

(b) CONFORMING AMENDMENT.—Section 13245 of the Omnibus Budget Reconciliation Act of 1993 is hereby repealed.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect after September 30, 1995, but shall not take effect if section 11117 does not take effect.

(2) CROSS REFERENCE.—

For refund of tax paid on commercial aviation fuel before the date of the enactment of this Act, see section 6427(l) of the Internal Revenue Code of 1986.

(d) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—In the case of commercial aviation fuel which is held by any person on October 1, 1997, there is hereby imposed a floor stocks tax equal to 4.3 cents per gallon.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding aviation fuel on October 1, 1997, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before April 30, 1998.

(3) DEFINITIONS.—For purposes of this subsection—

(A) HELD BY A PERSON.—Aviation fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) COMMERCIAL AVIATION FUEL.—The term "commercial aviation fuel" means aviation fuel (as defined in section 4093 of such Code) which is held on October 1, 1997, for sale or use in commercial aviation (as defined in section 4092(b) of such Code).

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or the Secretary's delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to aviation fuel held by any person exclusively for any use for which a credit or refund of the entire tax imposed by section 4091 of such Code (other than the rate imposed by section 4091(b)(2) of such Code) is allowable for aviation fuel so used.

(5) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on aviation fuel held on October 1, 1997, by any person if the aggregate amount of commercial aviation fuel held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4).

(C) CONTROLLED GROUPS.—For purposes of this paragraph—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code shall, insofar as applicable and

not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4091.

SEC. 11117. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES.

(a) FUEL TAX.—

(1) Subparagraph (A) of section 4091(b)(3) is amended by striking "January 1, 1996" and inserting "October 1, 1996".

(2) Paragraph (2) of section 4081(d), as amended by section 11651 of this Act, is amended by striking "January 1, 1996" and inserting "October 1, 1996".

(b) TICKET TAXES.—Sections 4261(g) and 4271(d) are each amended by striking "January 1, 1996" and inserting "October 1, 1996".

(c) TRANSFER TO AIRPORT AND AIRWAY TRUST FUND.—

(1) Subsection (b) of section 9502 is amended by striking "January 1, 1996" each place it appears and inserting "October 1, 1996".

(2) Paragraph (3) of section 9502(f) is amended by striking "December 31, 1995" and inserting "September 30, 1996".

SEC. 11118. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

Subsection (c) of section 10511 of the Revenue Act of 1987 is amended by striking "October 1, 2000" and by inserting "October 1, 2002".

CHAPTER 2—SUNSET OF LOW-INCOME HOUSING CREDIT

SEC. 11121. SUNSET OF LOW-INCOME HOUSING CREDIT.

(a) REPEAL OF REALLOCATION OF UNUSED CREDITS AMONG STATES.—Subparagraph (D) of section 42(h)(3) is amended by adding at the end the following new clause:

"(v) TERMINATION.—No amount may be allocated under this paragraph for any calendar year after 1995."

(b) TERMINATION.—Section 42 is amended by adding at the end the following new subsection:

"(o) TERMINATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2)—

"(A) clause (i) of subsection (h)(3)(C) shall not apply to any amount allocated after December 31, 1997, and

"(B) subsection (h)(4) shall not apply to any building placed in service after such date.

"(2) EXCEPTION FOR BOND-FINANCED BUILDINGS IN PROGRESS.—For purposes of paragraph (1)(B), a building shall be treated as placed in service before January 1, 1998, if—

"(A) the bonds with respect to such building are issued before such date,

"(B) the taxpayer's basis in the project (of which the building is a part) as of December 31, 1997, is more than 10 percent of the taxpayer's reasonably expected basis in such project as of December 31, 1999, and

"(C) such building is placed in service before January 1, 2000."

CHAPTER 3—EXTENSIONS OF SUPERFUND AND OIL SPILL LIABILITY TAXES

SEC. 11131. EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND TAXES.

(a) EXTENSION OF TAXES.—

(1) ENVIRONMENTAL TAX.—Section 59A(e) is amended to read as follows:

"(e) APPLICATION OF TAX.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1997.".

(2) EXCISE TAXES.—Section 4611(e) is amended to read as follows:

"(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before October 1, 1996.".

(b) TERMINATION ON DEPOSITS OF TAXES INTO HAZARDOUS SUBSTANCE SUPERFUND.—Paragraph (1) of section 9507(b) is amended by inserting "before August 1, 1996" after "received".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 11132. EXTENSION OF OIL SPILL LIABILITY TAX.

(a) IN GENERAL.—Section 4611(f)(1) (relating to application of oil spill liability trust fund financing rate) is amended by striking "after December 31, 1989, and before January 1, 1995" and inserting "after December 31, 1995, and before October 1, 2002".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1996.

CHAPTER 4—EXTENSIONS RELATING TO FUEL TAXES

SEC. 11141. ETHANOL BLENDER REFUNDS.

(a) IN GENERAL.—Paragraph (4) of section 6427(f) (relating to gasoline, diesel fuel, and aviation fuel used to produce certain alcohol fuels) is amended by striking "1995" and inserting "1999".

(b) SPECIAL RULE.—With respect to refund claims which could have been filed under section 6427(f) of the Internal Revenue Code of 1986 during the period beginning on October 8, 1995, and ending on the date of the enactment of this Act, but for the expiration of such section after September 30, 1995, interest shall accrue on such claims from the date which is the later of—

(1) November 1, 1995, or

(2) 20 days after the claim could have been filed under such section as in effect on September 30, 1995.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 11142. EXTENSION OF BINDING CONTRACT DATE FOR BIOMASS AND COAL FACILITIES.

(a) IN GENERAL.—Subparagraph (A) of section 29(g)(1) (relating to extension of certain facilities) is amended by striking "January 1, 1997" and inserting "January 1, 1998" and by striking "January 1, 1996" and inserting "July 1, 1996".

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

SEC. 11143. EXEMPTION FROM DIESEL FUEL DYEING REQUIREMENTS WITH RESPECT TO CERTAIN STATES.

(a) IN GENERAL.—Section 4082 (relating to exemptions for diesel fuel) 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) EXCEPTION TO DYEING REQUIREMENTS.—Paragraph (2) of subsection (a) shall not apply with respect to any diesel fuel—

"(1) removed, entered, or sold in a State for ultimate sale or use in an area of such State on or after the date on which such area is exempted from the fuel dyeing requirements under subsection (i) of section 211 of the Clean Air Act (as in effect on the date of the enactment of this subsection) by the Administrator of the Environmental Protection Agency under paragraph (4) of such subsection (i) (as so in effect), and

"(2) the use of which is certified pursuant to regulations issued by the Secretary."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act.

SEC. 11144. MORATORIUM FOR EXCISE TAX ON DIESEL FUEL SOLD FOR USE OR USED IN DIESEL-POWERED MOTORBOATS.

(a) IN GENERAL.—Subparagraph (D) of section 4041(a)(1) (relating to the imposition of tax on diesel fuel and special motor fuels) is amended to read as follows:

"(D) DIESEL FUEL USED IN MOTORBOATS.—

"(i) MORATORIUM.—No tax shall be imposed by subsection (a) or (d)(1) on diesel fuel sold for use or used in a diesel-powered motorboat during the period after December 31, 1995, and before July 1, 1997.

"(ii) SPECIAL TERMINATION DATE.—In the case of any sale for use, or use, of fuel in a diesel-powered motorboat—

"(I) effective during the period after September 30, 1999, and before January 1, 2000, the rate of tax imposed by this paragraph is 24.3 cents per gallon, and

"(II) the termination of the tax under subsection (d) shall not occur before January 1, 2000.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect after December 31, 1995.

CHAPTER 5—PERMANENT EXTENSION OF FUTA EXEMPTION FOR ALIEN AGRICULTURAL WORKERS

SEC. 11151. FUTA EXEMPTION FOR ALIEN AGRICULTURAL WORKERS.

(a) IN GENERAL.—Subparagraph (B) of section 3306(c)(1) (defining employment) is amended by striking "before January 1, 1995,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services performed after December 31, 1994.

CHAPTER 6—DISCLOSURE OF RETURN INFORMATION FOR ADMINISTRATION OF CERTAIN VETERANS PROGRAMS

SEC. 11161. DISCLOSURE OF RETURN INFORMATION FOR ADMINISTRATION OF CERTAIN VETERANS PROGRAMS.

(a) GENERAL RULE.—Subparagraph (D) of section 6103(l)(7) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended by striking "Clause (viii) shall not apply after September 30, 1998." and inserting "Clause (viii) shall not apply after September 30, 2002."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle F—Taxpayer Bill of Rights 2 Provisions

SEC. 11201. EXPANSION OF AUTHORITY TO ABATE INTEREST.

(a) GENERAL RULE.—Paragraph (1) of section 6404(e) (relating to abatement of interest in certain cases) is amended—

(1) by inserting "unreasonable" before "error" each place it appears in subparagraphs (A) and (B), and

(2) by striking "in performing a ministerial act" each place it appears and inserting "in performing a ministerial or managerial act".

(b) CLERICAL AMENDMENT.—The subsection heading for subsection (e) of section 6404 is amended—

(1) by striking "ASSESSMENTS" and inserting "ABATEMENT", and

(2) by inserting "UNREASONABLE" before "ERRORS".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.

SEC. 11202. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.

(a) GENERAL RULE.—Paragraph (3) of section 6601(e) (relating to payments made within 10 days after notice and demand) is amended to read as follows:

"(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6601(e)(2) is amended by striking "10 days from the date of notice and demand therefor" and inserting "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)".

(2) Paragraph (3) of section 6651(a) is amended by striking "10 days of the date of the notice and demand therefor" and inserting "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any notice and demand given after June 30, 1996.

SEC. 11203. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.

(a) GENERAL RULE.—Paragraph (2) of section 6013(b) (relating to limitations on filing of joint return after filing separate returns) is amended by striking subparagraph (A) and redesignating the following subparagraphs accordingly.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 11204. MODIFICATIONS TO CERTAIN LEVY EXEMPTION AMOUNTS.

(a) FUEL, ETC.—Paragraph (2) of section 6334(a) (relating to fuel, provisions, furniture, and personal effects exempt from levy) is amended—

(1) by striking "If the taxpayer is the head of a family, so" and inserting "So",

(2) by striking "his household" and inserting "the taxpayer's household", and

(3) by striking "$1,650 ($1,550 in the case of levies issued during 1989)" and inserting "$2,500".

(b) BOOKS, ETC.—Paragraph (3) of section 6334(a) (relating to books and tools of a trade, business, or profession) is amended by striking "$1,100 ($1,050 in the case of levies issued during 1989)" and inserting "$1,250".

(c) INFLATION ADJUSTMENT.—Section 6334 (relating to property exempt from levy) is amended by adding at the end the following new subsection:

"(f) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any calendar year beginning after 1996, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to levies issued after December 31, 1995.

SEC. 11205. OFFERS-IN-COMPROMISE.

(a) REVIEW REQUIREMENTS.—Subsection (b) of section 7122 (relating to records) is amended by striking "$500." and inserting

"$50,000. However, such compromise shall be subject to continuing quality review by the Secretary.".

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

SEC. 11206. INCREASED LIMIT ON ATTORNEY FEES.

(a) IN GENERAL.—Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended—

(1) by striking "$75" in clause (iii) of subparagraph (B) and inserting "$110",

(2) by striking "an increase in the cost of living or" in clause (iii) of subparagraph (B), and

(3) by adding after clause (iii) the following:

"In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

SEC. 11207. AWARD OF LITIGATION COSTS PERMITTED IN DECLARATORY JUDGMENT PROCEEDINGS.

(a) IN GENERAL.—Subsection (b) of section 7430 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

SEC. 11208. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.

(a) GENERAL RULE.—Subsection (b) of section 7433 (relating to damages) is amended by striking "$100,000" and inserting "$1,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 11209. ENROLLED AGENTS INCLUDED AS THIRD-PARTY RECORDKEEPERS.

(a) IN GENERAL.—Paragraph (3) of section 7609(a) (relating to third-party recordkeeper defined) is amended by striking "and" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting "; and", and by adding at the end the following the subparagraph:

"(I) any enrolled agent."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to summonses issued after the date of the enactment of this Act.

SEC. 11210. ANNUAL REMINDERS TO TAXPAYERS WITH OUTSTANDING DELINQUENT ACCOUNTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7524. ANNUAL NOTICE OF TAX DELINQUENCY.

"Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7524. Annual notice of tax delinquency."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years after 1995.

Subtitle G—Casualty and Involuntary Conversion Provisions

SEC. 11251. BASIS ADJUSTMENT TO PROPERTY HELD BY CORPORATION WHERE STOCK IN CORPORATION IS REPLACEMENT PROPERTY UNDER INVOLUNTARY CONVERSION RULES.

(a) IN GENERAL.—Subsection (b) of section 1033 is amended to read as follows:

"(b) BASIS OF PROPERTY ACQUIRED THROUGH INVOLUNTARY CONVERSION.—

"(1) CONVERSIONS DESCRIBED IN SUBSECTION (a)(1).—If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1), the basis shall be the same as in the case of the property so converted—

"(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

"(B) increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

"(2) CONVERSIONS DESCRIBED IN SUBSECTION (a)(2).—In the case of property purchased by the taxpayer in a transaction described in subsection (a)(2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than 1 piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

"(3) PROPERTY HELD BY CORPORATION THE STOCK OF WHICH IS REPLACEMENT PROPERTY.—

"(A) IN GENERAL.—If the basis of stock in a corporation is decreased under paragraph (2), an amount equal to such decrease shall also be applied to reduce the basis of property held by the corporation at the time the taxpayer ac-

quired control (as defined in subsection (a)(2)(E)) of such corporation.

“(B) LIMITATION.—Subparagraph (A) shall not apply to the extent that it would (but for this subparagraph) require a reduction in the aggregate adjusted bases of the property of the corporation below the taxpayer’s adjusted basis of the stock in the corporation (determined immediately after such basis is decreased under paragraph (2)).

“(C) ALLOCATION OF BASIS REDUCTION.—The decrease required under subparagraph (A) shall be allocated—

“(i) first to property which is similar or related in service or use to the converted property,

“(ii) second to depreciable property (as defined in section 1017(b)(3)(B)) not described in clause (i), and

“(iii) then to other property.

“(D) SPECIAL RULES.—

“(i) REDUCTION NOT TO EXCEED ADJUSTED BASIS OF PROPERTY.—No reduction in the basis of any property under this paragraph shall exceed the adjusted basis of such property (determined without regard to such reduction).

“(ii) ALLOCATION OF REDUCTION AMONG PROPERTIES.—If more than 1 property is described in a clause of subparagraph (C), the reduction under this paragraph shall be allocated among such property in proportion to the adjusted bases of such property (as so determined).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to involuntary conversions occurring after September 13, 1995.

SEC. 11252. EXPANSION OF REQUIREMENT THAT INVOLUNTARILY CONVERTED PROPERTY BE REPLACED WITH PROPERTY ACQUIRED FROM AN UNRELATED PERSON.

(a) IN GENERAL.—Subsection (i) of section 1033 is amended to read as follows:

“(i) REPLACEMENT PROPERTY MUST BE ACQUIRED FROM UNRELATED PERSON IN CERTAIN CASES.—

“(1) IN GENERAL.—If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B).

“(2) TAXPAYERS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

“(A) a C corporation,

“(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and

“(C) any other taxpayer if, with respect to property which is involuntarily converted during the taxable year,

the aggregate of the amount of realized gain on such property on which there is realized gain exceeds $100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(3) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to involuntary conversions occurring after September 13, 1995.

SEC. 11253. SPECIAL RULE FOR CROP INSURANCE PROCEEDS AND DISASTER PAYMENTS.

(a) IN GENERAL.—Section 451(d) (relating to special rule for crop insurance proceeds and disaster payments) is amended to read as follows:

"(d) SPECIAL RULE FOR CROP INSURANCE PROCEEDS AND DISASTER PAYMENTS.—

"(1) GENERAL RULE.—In the case of any payment described in paragraph (2), a taxpayer reporting on the cash receipts and disbursements method of accounting—

"(A) may elect to treat any such payment received in the taxable year of destruction or damage of crops as having been received in the following taxable year if the taxpayer establishes that, under the taxpayer's practice, income from such crops involved would have been reported in a following taxable year, or

"(B) may elect to treat any such payment received in a taxable year following the taxable year of the destruction or damage of crops as having been received in the taxable year of destruction or damage, if the taxpayer establishes that, under the taxpayer's practice, income from such crops involved would have been reported in the taxable year of destruction or damage.

"(2) PAYMENTS DESCRIBED.—For purposes of this subsection, a payment is described in this paragraph if such payment—

"(A) is insurance proceeds received on account of destruction or damage to crops, or

"(B) is disaster assistance received under any Federal law as a result of—

"(i) destruction or damage to crops caused by drought, flood, or other natural disaster, or

"(ii) inability to plant crops because of such a disaster.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to payments received after December 31, 1992, as a result of destruction or damage occurring after such date.

SEC. 11254. APPLICATION OF INVOLUNTARY EXCLUSION RULES TO PRESIDENTIALLY DECLARED DISASTERS.

(a) IN GENERAL.—Section 1033(h) is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and by inserting after paragraph (1) the following new paragraph:

"(2) TRADE OR BUSINESS AND INVESTMENT PROPERTY.—If a taxpayer's property held for productive use in a trade or business or for investment is compulsorily or involuntarily converted as a result of a Presidentially declared disaster, tangible property of a type held for productive use in a trade or business shall be treated for purposes of subsection (a) as property similar or related in use to the property so converted.".

(b) CONFORMING AMENDMENTS.—Section 1033(h) is amended—

(1) by striking "residence" in paragraph (3) (as redesignated by subsection (a)) and inserting "property",

(2) by striking "Principal Residences" in the heading and inserting "Property", and

(3) by striking "(1) IN GENERAL.—" and inserting "(1) PRINCIPAL RESIDENCES.—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disasters declared after December 31, 1994, in taxable years ending after such date.

Subtitle H—Exempt Organizations and Charitable Reforms

CHAPTER 1—EXCISE TAX ON AMOUNTS OF PRIVATE EXCESS BENEFITS

SEC. 11271. EXCISE TAXES FOR FAILURE BY CERTAIN CHARITABLE ORGANIZATIONS TO MEET CERTAIN QUALIFICATION REQUIREMENTS.

(a) IN GENERAL.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by redesignating subchapter D as subchapter E and by inserting after subchapter C the following new subchapter:

"Subchapter D—Failure By Certain Charitable Organizations To Meet Certain Qualification Requirements

"SEC. 4958. TAXES ON EXCESS BENEFIT TRANSACTIONS.

"(a) INITIAL TAXES.—

"(1) ON THE DISQUALIFIED PERSON.—There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

"(2) ON THE MANAGEMENT.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit *transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.*

"(b) ADDITIONAL TAX ON THE DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

"(c) EXCESS BENEFIT TRANSACTION; EXCESS BENEFIT.—For purposes of this section—

"(1) EXCESS BENEFIT TRANSACTION.—

"(A) IN GENERAL.—The term 'excess benefit transaction' means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

"(B) EXCESS BENEFIT.—The term 'excess benefit' means the excess referred to in subparagraph (A).

"(2) AUTHORITY TO INCLUDE CERTAIN OTHER PRIVATE INUREMENT.—To the extent provided in regulations prescribed by the Secretary, the term 'excess benefit transaction' includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

"(2) LIMIT FOR MANAGEMENT.—With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000.

"(e) APPLICABLE TAX-EXEMPT ORGANIZATION.—For purposes of this subchapter, the term 'applicable tax-exempt organization' means—

"(1) any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), and

"(2) any organization which was described in paragraph (1) at any time during the 2-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) DISQUALIFIED PERSON.—The term 'disqualified person' means, with respect to any transaction—

"(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,

"(B) a member of the family of an individual described in subparagraph (A), and

"(C) a 35-percent controlled entity.

"(2) ORGANIZATION MANAGER.—The term 'organization manager' means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

"(3) 35-PERCENT CONTROLLED ENTITY.—

"(A) IN GENERAL.—The term '35-percent controlled entity' means—

"(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

"(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

"(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

"(B) CONSTRUCTIVE OWNERSHIP RULES.—Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

"(4) FAMILY MEMBERS.—The members of an individual's family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

"(5) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest 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 the tax imposed by subsection (a)(1) is assessed.

"(6) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and where fully undoing the excess benefit is not possible, such additional corrective action as is prescribed by the Secretary by regulations."

(b) APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—

(1) Paragraph (4) of section 501(c) is amended by inserting "(A)" after "(4)" and by adding at the end the following:

"(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual."

(2) In the case of an organization operating on a cooperative basis which, before the date of the enactment of this Act, was determined by the Secretary of the Treasury or his delegate, to be described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, the allocation or return of net margins or capital to the members of such organization in accordance with its incorporating statute and bylaws shall not be treated for purposes of such Code as the inurement of the net earnings of such organization to the benefit of any private shareholder or individual. The preceding sentence shall apply only if such statute and bylaws are substantially as such statute and bylaws were in existence on the date of the enactment of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4955 is amended—

(A) by striking "SECTION 4945" in the heading and inserting "SECTIONS 4945 and 4958", and

(B) by inserting before the period "or an excess benefit for purposes of section 4958".

(2) Subsections (a), (b), and (c) of section 4963 are each amended by inserting "4958," after "4955,".

(3) Subsection (e) of section 6213 is amended by inserting "4958 (relating to private excess benefit)," before "4971".

(4) Paragraphs (2) and (3) of section 7422(g) are each amended by inserting "4958," after "4955,".

(5) Subsection (b) of section 7454 is amended by inserting "or whether an organization manager (as defined in section 4958(f)(2)) has 'knowingly' participated in an excess benefit transaction (as defined in section 4958(c))," after "section 4912(b),".

(6) The table of subchapters for chapter 42 is amended by striking the last item and inserting the following:

"Subchapter D. Failure by certain charitable organizations to meet certain qualification requirements.
"Subchapter E. Abatement of first and second tier taxes in certain cases."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section (other than subsection (b)) shall apply to excess benefit transactions occurring on or after September 14, 1995.

(2) BINDING CONTRACTS.—The amendments referred to in paragraph (1) shall not apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

(3) APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(C)(4).—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to inurement occurring on or after September 14, 1995.

(B) BINDING CONTRACTS.—The amendment made by subsection (b) shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such inurement occurred.

SEC. 11272. REPORTING OF CERTAIN EXCISE TAXES AND OTHER INFORMATION.

(a) REPORTING BY ORGANIZATIONS DESCRIBED IN SECTION 501(c)(3).—Subsection (b) of section 6033 (relating to certain organizations described in section 501(c)(3)) is amended by striking "and" at the end of paragraph (9), by redesignating paragraph (10) as paragraph (14), and by inserting after paragraph (9) the following new paragraphs:

"(10) the respective amounts (if any) of the taxes paid by the organization during the taxable year under the following provisions:

"(A) section 4911 (relating to tax on excess expenditures to influence legislation),

"(B) section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations), and

"(C) section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations),

"(11) the respective amounts (if any) of the taxes paid by the organization, or any disqualified person with respect to such organization, during the taxable year under section 4958 (relating to taxes on private excess benefit from certain charitable organizations),

"(12) such information as the Secretary may require with respect to any excess benefit transaction (as defined in section 4958),

"(13) the name of each disqualified person (as defined in section 4958(f)(1)(A)) with respect to such organization and such other information as the Secretary may prescribe, and".

(b) ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—Section 6033 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) CERTAIN ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—Every organization described in section 501(c)(4) which is subject to the requirements of subsection (a) shall include on the return required under subsection (a) the information referred to in paragraphs (11), (12) and (13) of subsection (b) with respect to such organization."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns for taxable years beginning after the date of the enactment of this Act.

SEC. 11273. INCREASE IN PENALTIES ON EXEMPT ORGANIZATIONS FOR FAILURE TO FILE COMPLETE AND TIMELY ANNUAL RETURNS.

(a) IN GENERAL.—Subparagraph (A) of section 6652(c)(1) (relating to annual returns under section 6033) is amended by striking

"$10" and inserting "$20" and by striking "$5,000" and inserting "$10,000".

(b) LARGER PENALTY ON ORGANIZATIONS HAVING GROSS RECEIPTS IN EXCESS OF $1,000,000.—Subparagraph (A) of section 6652(c)(1) is amended by adding at the end the following new sentence: "In the case of an organization having gross receipts exceeding $1,000,000 for any year, with respect to the return required under section 6033 for such year, the first sentence of this subparagraph shall be applied by substituting '$100' for '$20' and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed $50,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns for taxable years ending on or after December 31, 1995.

CHAPTER 2—OTHER PROVISIONS

SEC. 11276. COOPERATIVE SERVICE ORGANIZATIONS FOR CERTAIN FOUNDATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) COOPERATIVE SERVICE ORGANIZATIONS FOR CERTAIN FOUNDATIONS.—

"(1) IN GENERAL.—For purposes of this title, if an organization—

"(A) is organized and operated solely for purposes referred to in subsection (f)(1),

"(B) is composed solely of members which are exempt from taxation under subsection (a) and are—

"(i) private foundations, or

"(ii) community foundations as to which section 170(b)(1)(A)(vi) applies,

"(C) has at least 20 members,

"(D) does not at any time after the second taxable year beginning after the date of its organization or, if later, beginning after the date of the enactment of this subsection, have a member which holds more than 10 percent (by value) of the interests in the organization,

"(E) is organized and controlled by its members but is not controlled by any one member and does not have a member which controls another member of the organization, and

"(F) permits members of the organization to require the dismissal of any of the organization's investment advisers, following reasonable notice, if members holding a majority of interest in the account managed by such adviser vote to remove such adviser,

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

"(2) TREATMENT OF INCOME OF MEMBERS.—If any member of an organization described in paragraph (1) is a private foundation (other than an exempt operating foundation, as defined in section 4940(d)), such private foundation's allocable share of

the capital gain net income and gross investment income of the organization for any taxable year of the organization shall be treated, for purposes of section 4940, as capital gain net income and gross investment income of such private foundation (whether or not distributed to such foundation) for the taxable year of such private foundation with or within which the taxable year of the organization described in paragraph (1) ends (and such private foundation shall take into account its allocable share of the deductions referred to in section 4940(c)(3) of the organization).

"(3) APPLICABLE EXCISE TAXES.—Subchapter A of chapter 42 (other than sections 4940 and 4942) shall apply to any organization described in paragraph (1).".

(b) CONFORMING AMENDMENTS.—

(1) Section 4945(d) is amended by adding at the end the following new flush sentence:

"Paragraph (4)(B) shall not apply to a grant to an organization described in section 501(n)."

(2) Section 4942(g)(1)(A) is amended by inserting "or an organization described in section 501(n)" after "subsection (j)(3))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1995.

SEC. 11277. EXCLUSION FROM UNRELATED BUSINESS TAXABLE INCOME FOR CERTAIN SPONSORSHIP PAYMENTS.

(a) IN GENERAL.—Section 513 (relating to unrelated trade or business income) is amended by adding at the end the following new subsection:

"(i) TREATMENT OF CERTAIN SPONSORSHIP PAYMENTS.—

"(1) IN GENERAL.—The term 'unrelated trade or business' does not include the activity of soliciting and receiving qualified sponsorship payments.

"(2) QUALIFIED SPONSORSHIP PAYMENTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified sponsorship payment' means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo (or product lines) of such person's trade or business in connection with the activities of the organization that receives such payment. Such a use or acknowledgement does not include advertising such person's products or services (including messages containing qualitative or comparative language, price information or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services).

"(B) LIMITATIONS.—

"(i) CONTINGENT PAYMENTS.—The term 'qualified sponsorship payment' does not include any payment if the amount of such payment is contingent upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure to one or more events.

"(ii) ACKNOWLEDGEMENTS OR ADVERTISING IN PERIODICALS.—The term 'qualified sponsorship payment' does not include any payment which entitles the payor to an acknowledgement or advertising in regularly scheduled and printed material published by or on behalf of the payee organization that is not related to and primarily distributed in connection with a specific event conducted by the payee organization.

"(3) ALLOCATION OF PORTIONS OF SINGLE PAYMENT.—For purposes of this subsection, to the extent that a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, such portion of such payment and the other portion of such payment shall be treated as separate payments.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments solicited or received after December 31, 1995.

SEC. 11278. TREATMENT OF DUES PAID TO AGRICULTURAL OR HORTICULTURAL ORGANIZATIONS.

(a) GENERAL RULE.—Section 512 (defining unrelated business taxable income) is amended by adding at the end the following new subsection:

"(d) TREATMENT OF DUES OF AGRICULTURAL OR HORTICULTURAL ORGANIZATIONS.—

"(1) IN GENERAL.—If—

"(A) an agricultural or horticultural organization described in section 501(c)(5) requires annual dues to be paid in order to be a member of such organization, and

"(B) the amount of such required annual dues does not exceed $100,

in no event shall any portion of such dues be treated as derived by such organization from an unrelated trade or business by reason of any benefits or privileges to which members of such organization are entitled.

"(2) INDEXATION OF $100 AMOUNT.—In the case of any taxable year beginning in a calendar year after 1995, the $100 amount in paragraph (1) shall be increased by an amount equal to—

"(A) $100, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1994' for 'calendar year 1992' in subparagraph (B) thereof.

"(3) DUES.—For purposes of this subsection, the term 'dues' means any payment required to be made in order to be recognized by the organization as a member of the organization.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1994.

SEC. 11279. REPEAL OF CREDIT FOR CONTRIBUTIONS TO COMMUNITY DEVELOPMENT CORPORATIONS.

(a) IN GENERAL.—Section 13311 of the Revenue Reconciliation Act of 1993 (relating to credit for contributions to certain community development corporations) is hereby repealed.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after the date of the enactment of this Act (other than contributions made pursuant to a legally enforceable agreement which is effect on the date of the enactment of this Act).

Subtitle I—Tax Reform and Other Provisions

CHAPTER 1—PROVISIONS RELATING TO BUSINESSES

SEC. 11301. TAX TREATMENT OF CERTAIN EXTRAORDINARY DIVIDENDS.

(a) TREATMENT OF EXTRAORDINARY DIVIDENDS IN EXCESS OF BASIS.—Paragraph (2) of section 1059(a) (relating to corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends) is amended to read as follows:

"(2) AMOUNTS IN EXCESS OF BASIS.—If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received.".

(b) TREATMENT OF REDEMPTIONS WHERE OPTIONS INVOLVED.—Paragraph (1) of section 1059(e) (relating to treatment of partial liquidations and non-pro rata redemptions) is amended to read as follows:

"(1) TREATMENT OF PARTIAL LIQUIDATIONS AND CERTAIN REDEMPTIONS.—Except as otherwise provided in regulations—

"(A) REDEMPTIONS.—In the case of any redemption of stock—

"(i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,

"(ii) which is not pro rata as to all shareholders, or

"(iii) which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4),

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

"(B) REORGANIZATIONS, ETC.—An exchange described in section 356(a)(1) which is treated as a dividend under section 356(a)(2) shall be treated as a redemption of stock for purposes of applying subparagraph (A).".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions after May 3, 1995.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

(B) a tender offer outstanding on May 3, 1995.

(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting "September 13, 1995" for "May 3, 1995".

SEC. 11302. REGISTRATION OF CONFIDENTIAL CORPORATE TAX SHELTERS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN CONFIDENTIAL ARRANGEMENTS TREATED AS TAX SHELTERS.—

"(1) IN GENERAL.—For purposes of this section, the term 'tax shelter' includes any entity, plan, arrangement, or transaction—

"(A) a significant purpose of the structure of which is the avoidance or evasion of Federal income tax for a direct or indirect participant which is a corporation,

"(B) which is offered to any potential participant under conditions of confidentiality, and

"(C) for which the tax shelter promoters may receive fees in excess of $100,000 in the aggregate.

"(2) CONDITIONS OF CONFIDENTIALITY.—For purposes of paragraph (1)(B), an offer is under conditions of confidentiality if—

"(A) the potential participant to whom the offer is made (or any other person acting on behalf of such participant) has an understanding or agreement with or for the benefit of any promoter of the tax shelter that such participant (or such other person) will limit disclosure of the tax shelter or any significant tax features of the tax shelter, or

"(B) any promoter of the tax shelter—

"(i) claims, knows, or has reason to know,

"(ii) knows or has reason to know that any other person (other than the potential participant) claims, or

"(iii) causes another person to claim,

that the tax shelter (or any aspect thereof) is proprietary to any person other than the potential participant or is otherwise protected from disclosure to or use by others.

For purposes of this subsection, the term 'promoter' means any person or any related person (within the meaning of section 267 or 707) who participates in the organization, management, or sale of the tax shelter.

"(3) PERSONS OTHER THAN PROMOTER REQUIRED TO REGISTER IN CERTAIN CASES.—

"(A) IN GENERAL.—If—

"(i) the requirements of subsection (a) are not met with respect to any tax shelter (as defined in paragraph (1)) by any tax shelter promoter, and

"(ii) no tax shelter promoter is a United States person,

then each United States person who discussed participation in such shelter shall register such shelter under subsection (a).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a United States person who discussed participation in a tax shelter if—

"(i) such person notified the promoter in writing (not later than the close of the 90th day after the day on which such discussions began) that such person would not participate in such shelter, and

"(ii) such person does not participate in such shelter.

"(4) OFFER TO PARTICIPATE TREATED AS OFFER FOR SALE.—For purposes of subsections (a) and (b), an offer to participate in a tax shelter (as defined in paragraph (1)) shall be treated as an offer for sale.".

(b) PENALTY.—Subsection (a) of section 6707 (relating to failure to furnish information regarding tax shelters) is amended by adding at the end the following new paragraph:

"(3) CONFIDENTIAL ARRANGEMENTS.—

"(A) IN GENERAL.—In the case of a tax shelter (as defined in section 6111(d)), the penalty imposed under paragraph (1) shall be an amount equal to the greater of—

"(i) 50 percent of the fees paid to any promoter of the tax shelter with respect to offerings made before the date such shelter is registered under section 6111, or

"(ii) $10,000.

Clause (i) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in paragraph (1).

"(B) SPECIAL RULE FOR PARTICIPANTS REQUIRED TO REGISTER SHELTER.—In the case of a person required to register such a tax shelter by reason of section 6111(d)(3)—

"(i) such person shall be required to pay the penalty under paragraph (1) only if such person actually participated in such shelter,

"(ii) the amount of such penalty shall be determined by taking into account under subparagraph (A)(i) only the fees paid by such person, and

"(iii) such penalty shall be in addition to the penalty imposed on any other person for failing to register such shelter.".

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6707(a) is amended by striking "The penalty" and inserting "Except as provided in paragraph (3), the penalty".

(2) Subparagraph (A) of section 6707(a)(1) is amended by striking "paragraph (2)" and inserting "paragraph (2) or (3), as the case may be".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any tax shelter (as defined in section 6111(d) of the Internal Revenue Code of 1986, as amended by this section) interests in which are offered to potential participants after the Secretary of the Treasury prescribes guidance with respect to meeting requirements added by such amendments.

SEC. 11303. DENIAL OF DEDUCTION FOR INTEREST ON LOANS WITH RESPECT TO COMPANY-OWNED INSURANCE.

(a) IN GENERAL.—Paragraph (4) of section 264(a) is amended—

(1) by inserting ", or any endowment or annuity contracts owned by the taxpayer covering any individual," after "the life of any individual", and

(2) by striking all that follows "carried on by the taxpayer" and inserting a period.

(b) EXCEPTION FOR CONTRACTS RELATING TO KEY PERSONS; PERMISSIBLE INTEREST RATES.—Section 264 is amended—

(1) by striking "Any" in subsection (a)(4) and inserting "Except as provided in subsection (d), any", and

(2) by adding at the end the following new subsection:

"(d) SPECIAL RULES FOR APPLICATION OF SUBSECTION (a)(4).—

"(1) EXCEPTION FOR KEY PERSONS.—Subsection (a)(4) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of such indebtedness with respect to policies and contracts covering such individual does not exceed $50,000.

"(2) INTEREST RATE CAP ON KEY PERSONS AND PRE-1986 CONTRACTS.—

"(A) IN GENERAL.—No deduction shall be allowed by reason of paragraph (1) or the last sentence of subsection (a) with respect to interest paid or accrued for any month to the extent the amount of such interest exceeds the amount which would have been determined if the applicable rate of interest were used for such month.

"(B) APPLICABLE RATE OF INTEREST.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

"(ii) PRE-1986 CONTRACT.—In the case of indebtedness on a contract to which the last sentence of subsection (a) applies—

"(I) which is a contract providing a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased, or

"(II) which is a contract providing a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be such Moody's rate for the last month preceding such period.

For purposes of subclause (II), the taxpayer shall elect an applicable period for such contract on its return of tax imposed by this chapter for its first taxable year ending on or after October 13, 1995. Such applicable period shall be for any number of months (not greater than 12) specified in the election and may not be changed by the taxpayer without the consent of the Secretary.

"(3) KEY PERSON.—For purposes of paragraph (1), the term 'key person' means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of—

"(A) 5 individuals, or

"(B) the lesser of 5 percent of the total officers and employees of the taxpayer or 10 individuals.

"(4) 20-PERCENT OWNER.—For purposes of this subsection, the term '20-percent owner' means—

"(A) if the taxpayer is a corporation, any person who owns directly 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the total combined voting power of all stock of the corporation, or

"(B) if the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the employer.

"(5) AGGREGATION RULES.—

"(A) IN GENERAL.—For purposes of paragraph (4)(A) and applying the $50,000 limitation in paragraph (1)—

"(i) all members of a controlled group shall be treated as 1 taxpayer, and

"(ii) such limitation shall be allocated among the members of such group in such manner as the Secretary may prescribe.

"(B) CONTROLLED GROUP.—For purposes of this paragraph, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as members of a controlled group.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to interest paid or accrued after December 31, 1995.

(2) TRANSITION RULE FOR EXISTING INDEBTEDNESS.—

(A) IN GENERAL.—In the case of—

(i) indebtedness incurred before January 1, 1996, or

(ii) indebtedness incurred before January 1, 1997 with respect to any contract or policy entered into in 1994 or 1995,

the amendments made by this section shall not apply to qualified interest paid or accrued on such indebtedness after October 13, 1995, and before January 1, 1999.

(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest which

would be paid or accrued for such month on such indebtedness if—

(i) in the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

(ii) the lesser of the following rates of interest were used for such month:

(I) The rate of interest specified under the terms of the indebtedness as in effect on October 13, 1995 (and without regard to modification of such terms after such date).

(II) The applicable percentage rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

For purposes of clause (i), all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as one person.

(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	***The percentage is:***
1995	*100 percent*
1996	*90 percent*
1997	*80 percent*
1998	*70 percent.*

(3) SPECIAL RULE FOR GRANDFATHERED CONTRACTS.—This section shall not apply to any contract purchased on or before June 20, 1986, except that section 264(d)(2) of the Internal Revenue Code of 1986 shall apply to interest paid or accrued after October 13, 1995.

(d) SPREAD OF INCOME INCLUSION ON SURRENDER, ETC. OF CONTRACTS.—

(1) IN GENERAL.—If any amount is received under any life insurance policy or endowment or annuity contract described in paragraph (4) of section 264(a) of the Internal Revenue Code of 1986—

(A) on the complete surrender, redemption, or maturity of such policy or contract during calendar year 1996, 1997, or 1998, or

(B) in full discharge during any such calendar year of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract,

then (in lieu of any other inclusion in gross income) such amount shall be includible in gross income ratably over the 4-taxable year period beginning with the taxable year such amount would (but for this paragraph) be includible. The preceding sentence shall only apply to the extent the amount is includible in gross income for the taxable year in which the event described in subparagraph (A) or (B) occurs.

(2) SPECIAL RULES FOR APPLYING SECTION 264.—A contract shall not be treated as—

(A) failing to meet the requirement of section 264(c)(1) of the Internal Revenue Code of 1986, or

(B) a single premium contract under section 264(b)(1) of such Code,

solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) of this subsection or solely by reason of no additional premiums being received under the contract by reason of a lapse occurring after October 13, 1995.

(3) SPECIAL RULE FOR DEFERRED ACQUISITION COSTS.—In the case of the occurrence of any event described in subparagraph (A) or (B) of paragraph (1) of this subsection with respect to any policy or contract—

(A) section 848 of the Internal Revenue Code of 1986 shall not apply to the unamortized balance (if any) of the specified policy acquisition expenses attributable to such policy or contract immediately before the insurance company's taxable year in which such event occurs, and

(B) there shall be allowed as a deduction to such company for such taxable year under chapter 1 of such Code an amount equal to such unamortized balance.

SEC. 11304. TERMINATION OF SUSPENSE ACCOUNTS FOR FAMILY CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) IN GENERAL.—Subsection (i) of section 447 (relating to method of accounting for corporations engaged in farming) is amended by adding at the end the following new paragraph:

"(7) TERMINATION.—

"(A) IN GENERAL.—No suspense account may be established under this subsection by any corporation required by this section to change its method of accounting for any taxable year ending after September 13, 1995.

"(B) 20-YEAR PHASEOUT OF EXISTING SUSPENSE ACCOUNTS.—Each suspense account under this subsection shall be reduced (but not below zero) for each of the first 20 taxable years beginning after September 13, 1995, by an amount equal to the applicable portion of such account. Any reduction in a suspense account under this paragraph shall be included in gross income for the taxable year of the reduction. The amount of the reduction required under this paragraph for any taxable year shall be reduced (but not below zero) by the amount of any reduction required for such taxable year under any other provision of this subsection.

"(C) APPLICABLE PORTION.—For purposes of subparagraph (B), the term 'applicable portion' means, for any taxable year, the amount which would ratably reduce the amount in the account (after taking into account prior reductions) to zero over the period consisting of such taxable year and the remaining taxable years in such first 20 taxable years.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after September 13, 1995.

SEC. 11305. TERMINATION OF PUERTO RICO AND POSSESSION TAX CREDIT.

(a) IN GENERAL.—Section 936 is amended by adding at the end the following new subsection:

"(j) TERMINATION.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall not apply to any taxable year beginning after December 31, 1995.

"(2) TRANSITION RULES FOR ACTIVE BUSINESS INCOME CREDIT.—Except as provided in paragraph (3)—

"(A) IN GENERAL.—In the case of an existing credit claimant to which subsection (a)(4)(B) does not apply, the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 2002.

"(B) SPECIAL RULE FOR REDUCED CREDIT.—

"(i) IN GENERAL.—In the case of an existing credit claimant to which subsection (a)(4)(B) applies, the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 1998.

"(ii) ELECTION IRREVOCABLE AFTER 1997.—An election under subsection (a)(4)(B)(iii) which is in effect for the taxpayer's last taxable year beginning before 1997 may not be revoked unless it is revoked for the taxpayer's first taxable year beginning in 1997 and all subsequent taxable years.

"(3) ADDITIONAL RESTRICTED CREDIT.—

"(A) IN GENERAL.—In the case of an existing credit claimant—

"(i) the credit under subsection (a)(1)(A) shall be allowed for the period beginning with the first taxable year after the last taxable year to which subparagraph (A) or (B) of paragraph (2), whichever is appropriate, applied and ending with the last taxable year beginning before January 1, 2006, except that

"(ii) the aggregate amount of taxable income taken into account under subsection (a)(1)(A) for any such taxable year shall not exceed the adjusted base period income of such claimant.

"(B) COORDINATION WITH SUBSECTION (a)(4).—The amount of income described in subsection (a)(1)(A) which is taken into account in applying subsection (a)(4) shall be such income as reduced under this paragraph.

"(4) ADJUSTED BASE PERIOD INCOME.—For purposes of paragraph (3)—

"(A) IN GENERAL.—The term 'adjusted base period income' means the average of the inflation-adjusted possession incomes of the corporation for each base period year.

"(B) INFLATION-ADJUSTED POSSESSION INCOME.—For purposes of subparagraph (A), the inflation-adjusted possession income of any corporation for any base period year shall be an amount equal to the sum of—

“(i) the possession income of such corporation for such base period year, plus

“(ii) such possession income multiplied by the inflation adjustment percentage for such base period year.

“(C) INFLATION ADJUSTMENT PERCENTAGE.—For purposes of subparagraph (B), the inflation adjustment percentage for any base period year means the percentage (if any) by which—

“(i) the CPI for 1995, exceeds

“(ii) the CPI for the calendar year in which the base period year for which the determination is being made ends.

For purposes of the preceding sentence, the CPI for any calendar year is the CPI (as defined in section 1(f)(5)) for such year under section 1(f)(4).

“(D) INCREASE IN INFLATION ADJUSTMENT PERCENTAGE FOR GROWTH DURING BASE YEARS.—The inflation adjustment percentage (determined under subparagraph (C) without regard to this subparagraph) for each of the 5 taxable years referred to in paragraph (5)(A) shall be increased by—

“(i) 5 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1995;

“(ii) 10.25 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1994;

“(iii) 15.76 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1993;

“(iv) 21.55 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1992; and

“(v) 27.63 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1991.

“(5) BASE PERIOD YEAR.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘base period year’ means each of 3 taxable years which are among the 5 most recent taxable years of the corporation ending before October 14, 1995, determined by disregarding—

“(i) one taxable year for which the corporation had the largest inflation-adjusted possession income, and

“(ii) one taxable year for which the corporation had the smallest inflation-adjusted possession income.

“(B) CORPORATIONS NOT HAVING SIGNIFICANT POSSESSION INCOME THROUGHOUT 5-YEAR PERIOD.—

“(i) IN GENERAL.—If a corporation does not have significant possession income for each of the most recent 5 taxable years ending before October 14, 1995, then, in lieu of applying subparagraph (A), the term ‘base period year’ means only those taxable years (of such 5 taxable years) for which the corporation has sig-

nificant possession income; except that, if such corporation has significant possession income for 4 of such 5 taxable years, the rule of subparagraph (A)(ii) shall apply.

"(ii) SPECIAL RULE.—If there is no year (of such 5 taxable years) for which a corporation has significant possession income—

"(I) the term 'base period year' means the first taxable year ending on or after October 14, 1995, but

"(II) the amount of possession income for such year which is taken into account under paragraph (4) shall be the amount which would be determined if such year were a short taxable year ending on September 30, 1995.

"(iii) SIGNIFICANT POSSESSION INCOME.—For purposes of this subparagraph, the term 'significant possession income' means possession income which exceeds 2 percent of the possession income of the taxpayer for the taxable year (of the period of 6 taxable years ending with the first taxable year ending on or after October 14, 1995) having the greatest possession income.

"(C) ELECTION TO USE ONE BASE PERIOD YEAR.—

"(i) IN GENERAL.—At the election of the taxpayer, the term 'base period year' means—

"(I) only the last taxable year of the corporation ending in calendar year 1992, or

"(II) a deemed taxable year which includes the first ten months of calendar year 1995.

"(ii) BASE PERIOD INCOME FOR 1995.—In determining the adjusted base period income of the corporation for the deemed taxable year under clause (i)(II), the possession income shall be annualized and shall be determined without regard to any extraordinary item.

"(iii) ELECTION.—An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1995, for which it is a possession corporation. The rules of subclauses (II) and (III) of subsection (a)(4)(B)(iii) shall apply to the election under this subparagraph.

"(D) ACQUISITIONS AND DISPOSITIONS.—Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this subsection.

"(6) POSSESSION INCOME.—For purposes of this subsection, the term 'possession income' means the income referred to in subsection (a)(1)(A), except that there shall not be taken into account any such income from an applicable possession (as defined in paragraph (8)(B)). In no event shall possession income be treated as being less than zero.

"(7) SHORT YEARS.—If the current year or a base period year is a short taxable year, the application of this subsection shall be made with such annualizations as the Secretary shall prescribe.

"(8) SPECIAL RULES FOR CERTAIN POSSESSIONS.—

"(A) IN GENERAL.—In the case of an existing credit claimant with respect to an applicable possession, this section (other than the preceding paragraphs of this subsection) shall apply to taxable years beginning after December 31, 1995, and before January 1, 2006.

"(B) APPLICABLE POSSESSION.—For purposes of this paragraph, the term 'applicable possession' means Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(9) EXISTING CREDIT CLAIMANT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'existing credit claimant' means a corporation—

"(i) which was actively conducting a trade or business in a possession on October 13, 1995, and

"(ii) with respect to which an election under this section is in effect for the corporation's taxable year which includes October 13, 1995.

"(B) NEW LINES OF BUSINESS PROHIBITED.—If, after October 13, 1995, a corporation which would (but for this subparagraph) be an existing credit claimant adds a substantial new line of business, such corporation shall cease to be treated as an existing credit claimant as of the close of the taxable year ending before the date of such addition.

"(C) BINDING CONTRACT EXCEPTION.—If, on October 13, 1995, and at all times thereafter, there is in effect with respect to a corporation a binding contract for the acquisition of assets to be used in, or for the sale of assets to be produced from, a trade or business, the corporation shall be treated for purposes of this paragraph as actively conducting such trade or business on October 13, 1995. The preceding sentence shall not apply if such trade or business is not actively conducted before January 1, 1996.

"(D) SPECIAL RULE FOR APPLICABLE POSSESSIONS.—In determining under paragraph (8) whether a taxpayer is an existing credit claimant with respect to an applicable possession, this paragraph shall be applied separately with respect to such possession."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11306. DEPRECIATION UNDER INCOME FORECAST METHOD.

(a) GENERAL RULE.—Section 167 (relating to depreciation) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) DEPRECIATION UNDER INCOME FORECAST METHOD.—

"(1) IN GENERAL.—If the depreciation deduction allowable under this section to any taxpayer with respect to any property is determined under the income forecast method or any similar method—

"(A) in determining the amount of the depreciation deduction under such method, the estimated income from the property shall include all income earned before the close of the 10th taxable year following the taxable year in which

the property was placed in service in connection with the ultimate use of the property by, or the ultimate sale of merchandise to, persons who are not related persons (within the meaning of section 267(b)) to the taxpayer,

"(B) the adjusted basis of the property shall only include amounts with respect to which the requirements of section 461(h) are satisfied,

"(C) the depreciation deduction under such method for the 10th taxable year beginning after the taxable year in which the property was placed in service shall be equal to the adjusted basis of such property as of the beginning of such 10th taxable year, and

"(D) such taxpayer shall pay (or be entitled to receive) interest computed under the look-back method of paragraph (2) for any recomputation year.

"(2) LOOK-BACK METHOD.—The interest computed under the look-back method of this paragraph for any recomputation year shall be determined by—

"(A) first determining the depreciation deductions under this section with respect to such property which would have been allowable for prior taxable years if the determination of the amounts so allowable had been made on the basis of the sum of the following (instead of the estimated income with respect to such property)—

"(i) the actual income from such property for periods before the close of the recomputation year, and

"(ii) an estimate of the future income with respect to such property for periods after the recomputation year,

"(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each such prior taxable year which would result solely from the application of subparagraph (A), and

"(C) then using the adjusted overpayment rate (as defined in section 460(b)(7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any cost incurred after the property is placed in service (which is not treated as a separate property under paragraph (5)) shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such cost is incurred) such cost to its value as of the date the property is placed in service. The taxpayer may elect with respect to any property to have the preceding sentence not apply to such property.

"(3) EXCEPTION FROM LOOK-BACK METHOD.—Paragraph (1)(D) shall not apply with respect to any property which, when placed in service by the taxpayer, had a basis of $100,000 or less.

"(4) RECOMPUTATION YEAR.—For purposes of this subsection, except as provided in regulations, the term 'recomputation year' means, with respect to any property, the third and the 10th taxable years beginning after the taxable year in which the property was placed in service, unless the actual income from

the property for the period before the close of such third or 10th taxable year is within 10 percent of the estimated income from the property for such period which was taken into account under paragraph (1)(A).

"(5) SPECIAL RULES.—

"(A) CERTAIN COSTS TREATED AS SEPARATE PROPERTY.—For purposes of this subsection, the following costs shall be treated as separate properties:

"(i) Any costs incurred with respect to any property after the 10th taxable year beginning after the taxable year in which the property was placed in service.

"(ii) Any costs incurred after the property is placed in service and before the close of such 10th taxable year if such costs are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property.

"(B) SYNDICATION INCOME FROM TELEVISION SERIES.— In the case of property which is an episode in a television series, income from syndicating such series shall not be required to be taken into account under this subsection before the earlier of—

"(i) the 4th taxable year beginning after the date the first episode in such series is placed in service, or

"(ii) the earliest taxable year in which the taxpayer has an arrangement relating to the future syndication of such series.

"(C) COLLECTION OF INTEREST.—For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under paragraph (1) for any recomputation year shall be treated as an increase in the tax imposed by this chapter for such year.

"(D) DETERMINATIONS.—For purposes of paragraph (2), determinations of the amount of income from any property shall be determined in the same manner as for purposes of applying the income forecast method; except that any income from the disposition of such property shall be taken into account.

"(E) TREATMENT OF PASS-THRU ENTITIES.—Rules similar to the rules of section 460(b)(4) shall apply for purposes of this subsection.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to property placed in service after September 13, 1995.

(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property produced or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such production or acquisition.

SEC. 11307. TRANSFERS OF EXCESS PENSION ASSETS.

(a) IN GENERAL.—Section 420 (relating to transfers of excess pension assets to retiree health accounts) is amended by adding at the end the following new subsection:

"(f) SIMILAR RULES TO APPLY TO OTHER TRANSFERS OF EXCESS PLAN ASSETS.—

"(1) IN GENERAL.—If there is a qualified employee benefit transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to an employer—

"(A) a trust which is part of such plan shall not be treated as failing to meet the requirements of section 401(a) solely by reason of such transfer (or any other action authorized under this section), and

"(B) such transfer shall not be treated as—

"(i) an employer reversion for purposes of section 4980, or

"(ii) a prohibited transaction for purposes of section 4975.

The gross income of the employer shall include the amount of any qualified employee benefit transfer made during the taxable year.

"(2) QUALIFIED EMPLOYEE BENEFIT TRANSFER.—For purposes of this section—

"(A) IN GENERAL.—The term 'qualified employee benefit transfer' means a transfer—

"(i) of excess pension assets of a defined benefit plan to the employer, and

"(ii) with respect to which—

"(I) the use requirements of paragraph (3) are met, and

"(II) the requirements of subsection (c)(2)(A) are met (determined by treating such transfer as a qualified transfer).

"(B) LIMITATION ON AMOUNTS TRANSFERRED.—The amount of excess pension assets which may be transferred in qualified employee benefit transfers during any taxable year shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) during the taxable year for qualified current employee benefit liabilities.

"(C) COORDINATION WITH TRANSFERS TO RETIREE HEALTH ACCOUNTS.—Such term shall not include any qualified transfer (as defined in subsection (b)).

"(D) EXPIRATION.—No transfer in any taxable year beginning after December 31, 2001, shall be treated as a qualified employee benefit transfer.

"(3) RESTRICTIONS ON USE OF TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Any assets transferred to an employer in a qualified employee benefit transfer shall be used only to pay qualified current employee benefit liabilities for the taxable year of the transfer (whether directly or through reimbursement).

"(B) AMOUNTS NOT USED TO PAY BENEFITS.—An employer shall transfer to a plan an amount equal to any assets transferred out of the plan in a qualified employee benefit transfer which are not used as provided in subparagraph (A). Such amount shall be treated in the same man-

ner as amounts are treated under subsection (c)(1)(B), except that allocable income shall be determined by using the Federal short-term rate under section 1274(d).

"(C) QUALIFIED CURRENT EMPLOYEE BENEFIT LIABILITIES.—For purposes of this subsection—

"(i) IN GENERAL.—The term 'qualified current employee benefit liabilities' means, with respect to any taxable year, the aggregate amounts (including administrative expenses) for which a deduction is allowable to the employer for such taxable year with respect to applicable employee benefits.

"(ii) APPLICABLE EMPLOYEE BENEFITS.—The term 'applicable employee benefits' means—

"(I) contributions to a trust described in section 401(a) which is exempt from tax under section 501(a),

"(II) benefits under an accident or health plan (within the meaning of section 105),

"(III) disability benefits,

"(IV) benefits under an educational assistance program of the employer described in section 127(b), and

"(V) benefits under a dependent care assistance program of the employer described in section 129(d).

"(4) DEFINITION AND SPECIAL RULES.—For purposes of this subsection—

"(A) EXCESS PENSION ASSETS.—The term 'excess pension assets' has the meaning given such term by subsection (e)(2).

"(B) COORDINATION WITH SECTION 412.—In the case of a qualified employee benefit transfer—

"(i) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

"(ii) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'."

(b) EXCESS ASSETS.—Section 420(e)(2) is amended to read as follows:

"(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

"(A) the amount determined under section 412(c)(7)(A)(ii), over

"(B) the greater of—

"(i) the amount determined under section 412(c)(7)(A)(i)(II), or

"(ii) 125 percent of termination liability determined under section 414(l), except that the actuarial assumptions used in making such determinations shall be the assumptions used by the Pension Benefit Guaranty Corporation for single-employer plan termination purposes under regulations under title IV of the Employee Retirement Income Security Act of 1974.

The determination under the preceding sentence with respect to any transfer shall be made as of the date of the transfer. No substantial changes in the regulations described in clause (ii) which are made after the date of the enactment of the Revenue Reconciliation Act of 1995 shall be taken into account for purposes of such clause."

(c) TAXPAYERS IN BANKRUPTCY MAY NOT MAKE TRANSFERS.—Section 420(e) is amended by adding at the end the following new paragraph:

"(5) EXCLUSION OF TAXPAYERS IN BANKRUPTCY.—No qualified transfer or qualified employee benefit transfer may be made under this section by a taxpayer if—

"(A) the taxpayer has filed, or has had filed against it, a petition in a title 11 or similar case (within the meaning of section 368(a)(3)), and

"(B) such case is still pending."

(d) CONFORMING AMENDMENTS TO ERISA.—

(1) NOTICE.—Section 101(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)) is amended—

(A) by inserting "or a qualified employee benefit transfer," after "to a health benefits account," in paragraphs (1) and (2)(A),

(B) by inserting "or qualified employee benefits" after "the amount of health benefits liabilities" in paragraph (1),

(C) in paragraph (3)—

(i) by striking "January 1, 1995" and inserting "the date of the enactment of the Revenue Reconciliation Act of 1995", and

(ii) by striking "paragraph (1)" and inserting "this subsection", and

(D) by striking "TO HEALTH BENEFITS ACCOUNTS" in the heading.

(2) EXCLUSIVE BENEFIT.—Paragraph (1) of section 403(c) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking "January 1, 1995" and inserting "the date of the enactment of the Revenue Reconciliation Act of 1995".

(3) EXEMPTION FROM PROHIBITED TRANSACTION.—Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(13)) is amended—

(A) by striking "retiree health account" and inserting "health benefits account",

(B) by inserting before the period at the end ", or any transfer of such assets in a taxable year beginning before January 1, 2002, in a qualified employee benefit transfer permitted under such section 420", and

(C) by striking "January 1, 1995" and inserting "the date of the enactment of the Revenue Reconciliation Act of 1995".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers on and after the date of the enactment of this Act.

(2) QUALIFIED TRANSFERS.—To the extent the amendments made by subsections (b), (c), and (d) apply to qualified transfers under section 420 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act), such amendments shall apply to transfers occurring after December 31, 1995.

SEC. 11308. REPEAL OF EXCLUSION FOR INTEREST ON LOANS USED TO ACQUIRE EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 133 (relating to interest on certain loans used to acquire employer securities) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 291(e)(1) is amended by striking clause (iv) and by redesignating clause (v) as clause (iv).

(2) Section 812 is amended by striking subsection (g).

(3) Paragraph (5) of section 852(b) is amended by striking subparagraph (C).

(4) Paragraph (2) of section 4978(b) is amended by striking subparagraph (A) and all that follows and inserting the following:

"(A) first from qualified securities to which section 1042 applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

"(B) then from any other employer securities.

If subsection (d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.".

(5)(A) Section 4978B (relating to tax on disposition of employer securities to which section 133 applied) is hereby repealed.

(B) The table of sections for chapter 43 is amended by striking the item relating to section 4978B.

(6) Subsection (e) of section 6047 is amended by striking paragraphs (1), (2), and (3) and inserting the following new paragraphs:

"(1) any employer maintaining, or the plan administrator (within the meaning of section 414(g)) of, an employee stock ownership plan which holds stock with respect to which section 404(k) applies to dividends paid on such stock, or

"(2) both such employer or plan administrator,".

(7) Subsection (f) of section 7872 is amended by striking paragraph (12).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to loans made after October 13, 1995.

(2) REFINANCINGS.—The amendments made by this section shall not apply to loans made after October 13, 1995, to refinance securities acquisition loans (determined without regard to section 133(b)(1)(B) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act) made on or before such date or to refinance loans described in this paragraph if—

(A) the refinancing loans meet the requirements of section 133 of such Code (as so in effect),

(B) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and

(C) the term of such refinancing loan does not extend beyond the last day of the term of the original securities acquisition loan.

For purposes of this paragraph, the term "securities acquisition loan" includes a loan from a corporation to an employee stock ownership plan described in section 133(b)(3) of such Code (as so in effect).

CHAPTER 2—LEGAL REFORMS

SEC. 11311. REPEAL OF EXCLUSION FOR PUNITIVE DAMAGES AND FOR DAMAGES NOT ATTRIBUTABLE TO PHYSICAL INJURIES OR SICKNESS.

(a) IN GENERAL.—Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended to read as follows:

"(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;".

(b) EMOTIONAL DISTRESS AS SUCH TREATED AS NOT PHYSICAL INJURY OR PHYSICAL SICKNESS.—Section 104(a) is amended by striking the last sentence and inserting the following new sentence: "For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.".

(c) SPECIAL RULE FOR STATES IN WHICH ONLY PUNITIVE DAMAGES MAY BE AWARDED IN WRONGFUL DEATH ACTIONS.—Section 104 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) RESTRICTION ON PUNITIVE DAMAGES NOT TO APPLY IN CERTAIN CASES.—The restriction on the application of subsection (a)(2) to punitive damages shall not apply to punitive damages which—

"(1) are awarded in a civil action—

"(A) which is a wrongful death action, and

"(B) with respect to which applicable State law (as in effect on February 1, 1996, and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before February 1, 1996,

that only punitive damages may be awarded in such an action, and

"(2) would have been excludable from gross income under subsection (a)(2) as in effect for amounts received on December 31, 1995.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2)."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after December 31, 1995, in taxable years ending after such date.

(2) EXCEPTION.—The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

SEC. 11312. REPORTING OF CERTAIN PAYMENTS MADE TO ATTORNEYS.

(a) IN GENERAL.—Section 6045 (relating to returns of brokers) is amended by adding at the end the following new subsection:

"(f) RETURN REQUIRED IN THE CASE OF PAYMENTS TO ATTORNEYS.—

"(1) IN GENERAL.—Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

"(2) APPLICATION OF SUBSECTION.—

"(A) IN GENERAL.—This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

"(B) EXCEPTION.—This subsection shall not apply to the portion of any payment which is required to be reported under section 6041(a) (or would be so required but for the dollar limitation contained therein) or section 6051.".

(b) REPORTING OF ATTORNEYS' FEES PAYABLE TO CORPORATIONS.—The regulations providing an exception under section 6041 of the Internal Revenue Code of 1986 for payments made to corporations shall not apply to payments of attorneys' fees.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 1996.

CHAPTER 3—REFORMS RELATING TO NONRECOGNITION PROVISIONS

SEC. 11321. NO ROLLOVER OR EXCLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE WHICH IS ATTRIBUTABLE TO DEPRECIATION DEDUCTIONS.

(a) IN GENERAL.—Subsection (d) of section 1034 (relating to limitations) is amended by adding at the end the following new paragraph:

"(3) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—Subsection (a) shall not apply to so much of the gain from the sale of any residence as does not exceed the portion of

the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after December 31, 1995, in respect of such residence.''.

(b) COMPARABLE TREATMENT UNDER 1-TIME EXCLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE.—Subsection (d) of section 121 is amended by adding at the end the following new paragraph:

''(10) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—

''(A) IN GENERAL.—Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after December 31, 1995, in respect of such property.

''(B) COORDINATION WITH PARAGRAPH (5).—If this section does not apply to gain attributable to a portion of a residence by reason of paragraph (5), subparagraph (A) shall not apply to depreciation adjustments attributable to such portion.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1995.

SEC. 11322. NONRECOGNITION OF GAIN ON SALE OF PRINCIPAL RESIDENCE BY NONCITIZENS LIMITED TO NEW RESIDENCES LOCATED IN THE UNITED STATES.

(a) IN GENERAL.—Subsection (d) of section 1034 (relating to limitations) (as amended by section 11321) is amended by adding at the end the following new paragraph:

''(4) NEW RESIDENCE MUST BE LOCATED IN UNITED STATES IN CERTAIN CASES.—

''(A) IN GENERAL.—In the case of a sale of an old residence by a taxpayer—

''(i) who is not a citizen of the United States at the time of sale, and

''(ii) who is not a citizen or resident of the United States on the date which is 2 years after the date of the sale of such old residence,

subsection (a) shall apply only if the new residence is located in the United States or a possession of the United States.

''(B) PROPERTY HELD JOINTLY BY HUSBAND AND WIFE.—Subparagraph (A) shall not apply if—

''(i) the old residence is held by a husband and wife as joint tenants, tenants by the entirety, or community property,

''(ii) such husband and wife make a joint return for the taxable year of the sale or exchange, and

''(iii) one spouse is a citizen of the United States at the time of sale.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to sales of old residences after December 31, 1995.

(2) TREATMENT OF PURCHASES OF NEW RESIDENCES.—The amendment made by this section shall not apply to new residences—

(A) purchased before September 13, 1995, or

(B) purchased on or after such date pursuant to a binding contract in effect on such date and at all times thereafter before such purchase.

(3) CERTAIN RULES TO APPLY.—For purposes of this subsection, the rules of paragraphs (1), (2), and (3) of section 1034(c) of the Internal Revenue Code of 1986 shall apply.

CHAPTER 4—EXCISE TAX AND TAX-EXEMPT BOND PROVISIONS

SEC. 11331. REPEAL OF DIESEL FUEL TAX REBATE TO PURCHASERS OF DIESEL-POWERED AUTOMOBILES AND LIGHT TRUCKS.

(a) IN GENERAL.—Section 6427 (relating to fuels not used for taxable purposes) is amended by striking subsection (g).

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 34(a) is amended to read as follows:

"(3) under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(k)).".

(2) Paragraphs (1) and (2)(A) of section 6427(i) are each amended—

(A) by striking "(g),", and

(B) by striking "(or a qualified diesel powered highway vehicle purchased)" each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to vehicles purchased after December 31, 1995.

SEC. 11332. MODIFICATIONS TO EXCISE TAX ON OZONE-DEPLETING CHEMICALS.

(a) IN GENERAL.—Section 4682(d)(1) (relating to recycling) is amended by inserting ", or on any recycled halon imported from any country which is a signatory to the Montreal Protocol on Substances that Deplete the Ozone Layer" before the period at the end.

(b) CERTIFICATION SYSTEM.—The Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall develop a certification system to ensure compliance with the recycling requirement for imported halon under section 4682(d)(1) of the Internal Revenue Code of 1986, as amended by subsection (a).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 11333. ELECTION TO AVOID TAX-EXEMPT BOND PENALTIES FOR LOCAL FURNISHERS OF ELECTRICITY AND GAS.

Section 142(f) (relating to local furnishing of electric energy or gas) is amended by adding at the end the following new paragraphs:

"(3) ELECTION TO AVOID PENALTIES FOR CERTAIN FURNISHERS.—

"(A) IN GENERAL.—If—

"(i) a person engaged in the local furnishing of electric energy or gas, directly or indirectly financed facilities for such furnishing in whole or in part with exempt facility bonds described in subsection (a)(8) is-

sued before the date of the enactment of this paragraph,

"(ii) such bonds would (but for this paragraph) cease to be tax-exempt by reason of such person failing to meet the local furnishing requirement of such section as a result of a service area expansion by such person, and

"(iii) an election described in subparagraph (B) is made by such person with respect to all such facilities of the person,

then such bonds shall not cease to be tax-exempt by reason of such expansion (and section 150(b)(4) shall not apply to interest on such bonds).

"(B) ELECTION.—An election is described in this subparagraph if it is an election made in such manner as the Secretary prescribes, and such person agrees that—

"(i) no bond exempt from tax under section 103 and described in subsection (a)(8) may be issued on or after the date of the enactment of this paragraph with respect to the facilities for the local furnishing of electric energy or gas, or both of such person, other than such a bond issued to refund another bond if the amount of such bond does not exceed the outstanding amount of the refunded bond and the maturity date of the refunding bond is not later than the average maturity date of the refunded bonds to be refunded by the issue of which the refunding bond is a part,

"(ii) the expansion of the service area—

"(I) is not financed with the proceeds of any exempt facility bond described in subsection (a)(8), and

"(II) is not treated as a nonqualifying use under the rules of paragraph (2), and

"(iii) all outstanding bonds used to finance the facilities for such person are redeemed not later than 6 months after the later of—

"(I) the earliest date on which such bonds may be redeemed, or

"(II) the date of the election.

"(C) RELATED PERSONS.—For purposes of this paragraph, the term 'person' includes a group of related persons (within the meaning of section 144(a)(3)) which includes such person.

"(4) APPLICATION OF SECTION.—For purposes of this section, no person may qualify on or after the date of the enactment of this paragraph for tax-exempt bond financing for the local furnishing of electric energy or gas unless such person is engaged on such date in the local furnishing of the energy source for which facilities are financed.".

SEC. 11334. TAX-EXEMPT BONDS FOR SALE OF ALASKA POWER ADMINISTRATION FACILITY.

Sections 142(f)(4) (as added by section 11333(a)) and 147(d) of the Internal Revenue Code of 1986 shall not apply with respect to any private activity bond issued after the date of the enactment of *this Act and used to finance the acquisition of the Snettisham hydroelectric project from the Alaska Power Administration in determining if such bond is a qualified bond for purposes of such Code.*

CHAPTER 5—FOREIGN TRUST TAX COMPLIANCE

SEC. 11341. IMPROVED INFORMATION REPORTING ON FOREIGN TRUSTS.

(a) IN GENERAL.—Section 6048 (relating to returns as to certain foreign trusts) is amended to read as follows:

"SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

"(a) NOTICE OF CERTAIN EVENTS.—

"(1) GENERAL RULE.—On or before the 90th day (or such later day as the Secretary may prescribe) after any reportable event, the responsible party shall provide written notice of such event to the Secretary in accordance with paragraph (2).

"(2) CONTENTS OF NOTICE.—The notice required by paragraph (1) shall contain such information as the Secretary may prescribe, including—

"(A) the amount of money or other property (if any) transferred to the trust in connection with the reportable event, and

"(B) the identity of the trust and of each trustee and beneficiary (or class of beneficiaries) of the trust.

"(3) REPORTABLE EVENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'reportable event' means—

"(i) the creation of any foreign trust by a United States person,

"(ii) the transfer of any money or property (directly or indirectly) to a foreign trust by a United States person, including a transfer by reason of death, and

"(iii) the death of a citizen or resident of the United States if—

"(I) the decedent was treated as the owner of any portion of a foreign trust under the rules of subpart E of part I of subchapter J of chapter 1, or

"(II) any portion of a foreign trust was included in the gross estate of the decedent.

"(B) EXCEPTIONS.—

"(i) FAIR MARKET VALUE SALES.—Subparagraph (A)(ii) shall not apply to any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value and the rules of section 679(a)(3) shall apply.

"(ii) DEFERRED COMPENSATION AND CHARITABLE TRUSTS.—Subparagraph (A) shall not apply with respect to a trust which is—

"(I) described in section 402(b), 404(a)(4), or 404A, or

"(II) determined by the Secretary to be described in section 501(c)(3).

"(4) RESPONSIBLE PARTY.—For purposes of this subsection, the term 'responsible party' means—

"(A) the grantor in the case of the creation of an inter vivos trust,

"(B) the transferor in the case of a reportable event described in paragraph (3)(A)(ii) other than a transfer by reason of death, and

"(C) the executor of the decedent's estate in any other case.

"(b) UNITED STATES GRANTOR OF FOREIGN TRUST.—

"(1) IN GENERAL.—If, at any time during any taxable year of a United States person, such person is treated as the owner of any portion of a foreign trust under the rules of subpart E of part I of subchapter J of chapter 1, such person shall be responsible to ensure that—

"(A) such trust makes a return for such year which sets forth a full and complete accounting of all trust activities and operations for the year, the name of the United States agent for such trust, and such other information as the Secretary may prescribe, and

"(B) such trust furnishes such information as the Secretary may prescribe to each United States person (i) who is treated as the owner of any portion of such trust or (ii) who receives (directly or indirectly) any distribution from the trust.

"(2) TRUSTS NOT HAVING UNITED STATES AGENT.—

"(A) IN GENERAL.—If the rules of this paragraph apply to any foreign trust, the determination of amounts required to be taken into account with respect to such trust by a United States person under the rules of subpart E of part I of subchapter J of chapter 1 shall be determined by the Secretary.

"(B) UNITED STATES AGENT REQUIRED.—The rules of this paragraph shall apply to any foreign trust to which paragraph (1) applies unless such trust agrees (in such manner, subject to such conditions, and at such time as the Secretary shall prescribe) to authorize a United States person to act as such trust's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to—

"(i) any request by the Secretary to examine records or produce testimony related to the proper treatment of amounts required to be taken into account under the rules referred to in subparagraph (A), or

"(ii) any summons by the Secretary for such records or testimony.

The appearance of persons or production of records by reason of a United States person being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of the amounts required to be taken into account under the rules referred to in subparagraph (A). A foreign trust which appoints an agent described in this subparagraph shall not be considered to have an office or a permanent establishment in the United States, or to be engaged *in a trade or business in the United States, solely because of the activities of such agent pursuant to this subsection.*

"(C) OTHER RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (4) of section 6038A(e) shall apply for purposes of this paragraph.

"(c) REPORTING BY UNITED STATES BENEFICIARIES OF FOREIGN TRUSTS.—

"(1) IN GENERAL.—If any United States person receives (directly or indirectly) during any taxable year of such person any distribution from a foreign trust, such person shall make a return with respect to such trust for such year which includes—

"(A) the name of such trust,

"(B) the aggregate amount of the distributions so received from such trust during such taxable year, and

"(C) such other information as the Secretary may prescribe.

"(2) INCLUSION IN INCOME IF RECORDS NOT PROVIDED.—

"(A) IN GENERAL.—If adequate records are not provided to the Secretary to determine the proper treatment of any distribution from a foreign trust, such distribution shall be treated as an accumulation distribution includible in the gross income of the distributee under chapter 1. To the extent provided in regulations, the preceding sentence shall not apply if the foreign trust elects to be subject to rules similar to the rules of subsection (b)(2)(B).

"(B) APPLICATION OF ACCUMULATION DISTRIBUTION RULES.—For purposes of applying section 668 in a case to which subparagraph (A) applies, the applicable number of years for purposes of section 668(a) shall be ½ of the number of years the trust has been in existence.

"(d) SPECIAL RULES.—

"(1) DETERMINATION OF WHETHER UNITED STATES PERSON RECEIVES DISTRIBUTION.—For purposes of this section, in determining whether a United States person receives a distribution from a foreign trust, the fact that a portion of such trust is treated as owned by another person under the rules of subpart E of part I of subchapter J of chapter 1 shall be disregarded.

"(2) DOMESTIC TRUSTS WITH FOREIGN ACTIVITIES.—To the extent provided in regulations, a trust which is a United States person shall be treated as a foreign trust for purposes of this section and section 6677 if such trust has substantial activities, or holds substantial property, outside the United States.

"(3) TIME AND MANNER OF FILING INFORMATION.—Any notice or return required under this section shall be made at such time and in such manner as the Secretary shall prescribe.

"(4) MODIFICATION OF RETURN REQUIREMENTS.—The Secretary is authorized to suspend or modify any requirement of this section if the Secretary determines that the United States has no significant tax interest in obtaining the required information.".

(b) INCREASED PENALTIES.—Section 6677 (relating to failure to file information returns with respect to certain foreign trusts) is amended to read as follows:

"SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

"(a) CIVIL PENALTY.—In addition to any criminal penalty provided by law, if any notice or return required to be filed by section 6048—

"(1) is not filed on or before the time provided in such section, or

"(2) does not include all the information required pursuant to such section or includes incorrect information,

the person required to file such notice or return shall pay a penalty equal to 35 percent of the gross reportable amount. If any failure described in the preceding sentence continues for more than 90 days after the day on which the Secretary mails notice of such failure to the person required to pay such penalty, such person shall pay a penalty (in addition to the amount determined under the preceding sentence) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. In no event shall the penalty under this subsection with respect to any failure exceed the gross reportable amount.

"(b) SPECIAL RULES FOR RETURNS UNDER SECTION 6048(b).—In the case of a return required under section 6048(b)—

"(1) the United States person referred to in such section shall be liable for the penalty imposed by subsection (a), and

"(2) subsection (a) shall be applied by substituting '5 percent' for '35 percent'.

"(c) GROSS REPORTABLE AMOUNT.—For purposes of subsection (a), the term 'gross reportable amount' means—

"(1) the gross value of the property involved in the event (determined as of the date of the event) in the case of a failure relating to section 6048(a),

"(2) the gross value of the portion of the trust's assets at the close of the year treated as owned by the United States person in the case of a failure relating to section 6048(b)(1), and

"(3) the gross amount of the distributions in the case of a failure relating to section 6048(c).

"(d) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

"(e) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).".

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6724(d), as amended by sections 11004 and 11045, is amended by striking "or" at the end of subparagraph (U), by striking the period at the end of subparagraph (V) and inserting ", or", and by inserting after subparagraph (V) the following new subparagraph:

"(W) section 6048(b)(1)(B) (relating to foreign trust reporting requirements).".

(2) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6048 and inserting the following new item:

"Sec. 6048. Information with respect to certain foreign trusts.".

(3) The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6677 and inserting the following new item:

"Sec. 6677. Failure to file information with respect to certain foreign trusts.".

(d) EFFECTIVE DATES.—

(1) REPORTABLE EVENTS.—To the extent related to subsection (a) of section 6048 of the Internal Revenue Code of 1986, as amended by this section, the amendments made by this section shall apply to reportable events (as defined in such section 6048) occurring after the date of the enactment of this Act.

(2) GRANTOR TRUST REPORTING.—To the extent related to subsection (b) of such section 6048, the amendments made by this section shall apply to taxable years of United States persons beginning after the date of the enactment of this Act.

(3) REPORTING BY UNITED STATES BENEFICIARIES.—To the extent related to subsection (c) of such section 6048, the amendments made by this section shall apply to distributions received after the date of the enactment of this Act.

SEC. 11342. MODIFICATIONS OF RULES RELATING TO FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES.

(a) TREATMENT OF TRUST OBLIGATIONS, ETC.—

(1) Paragraph (2) of section 679(a) is amended by striking subparagraph (B) and inserting the following:

"(B) TRANSFERS AT FAIR MARKET VALUE.—To any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value.".

(2) Subsection (a) of section 679 (relating to foreign trusts having one or more United States beneficiaries) is amended by adding at the end the following new paragraph:

"(3) CERTAIN OBLIGATIONS NOT TAKEN INTO ACCOUNT UNDER FAIR MARKET VALUE EXCEPTION.—

"(A) IN GENERAL.—In determining whether paragraph (2)(B) applies to any transfer by a person described in clause (ii) or (iii) of subparagraph (C), there shall not be taken into account—

"(i) except as provided in regulations, any obligation of a person described in subparagraph (C), and

"(ii) to the extent provided in regulations, any obligation which is guaranteed by a person described in subparagraph (C).

"(B) TREATMENT OF PRINCIPAL PAYMENTS ON OBLIGATION.—Principal payments by the trust on any obligation referred to in subparagraph (A) shall be taken into account

on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

"(C) PERSONS DESCRIBED.—The persons described in this subparagraph are—

"(i) the trust,

"(ii) any grantor or beneficiary of the trust, and

"(iii) any person who is related (within the meaning of section 643(i)(2)(B)) to any grantor or beneficiary of the trust.".

(b) EXEMPTION OF TRANSFERS TO CHARITABLE TRUSTS.—Subsection (a) of section 679 is amended by striking "section 404(a)(4) or 404A" and inserting "section 6048(a)(3)(B)(ii)".

(c) OTHER MODIFICATIONS.—Subsection (a) of section 679 is amended by adding at the end the following new paragraphs:

"(4) SPECIAL RULES APPLICABLE TO FOREIGN GRANTOR WHO LATER BECOMES A UNITED STATES PERSON.—

"(A) IN GENERAL.—If a nonresident alien individual has a residency starting date within 5 years after directly or indirectly transferring property to a foreign trust, this section and section 6048 shall be applied as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer.

"(B) TREATMENT OF UNDISTRIBUTED INCOME.—For purposes of this section, undistributed net income for periods before such individual's residency starting date shall be taken into account in determining the portion of the trust which is attributable to property transferred by such individual to such trust but shall not otherwise be taken into account.

"(C) RESIDENCY STARTING DATE.—For purposes of this paragraph, an individual's residency starting date is the residency starting date determined under section 7701(b)(2)(A).

"(5) OUTBOUND TRUST MIGRATIONS.—If—

"(A) an individual who is a citizen or resident of the United States transferred property to a trust which was not a foreign trust, and

"(B) such trust becomes a foreign trust while such individual is alive,

then this section and section 6048 shall be applied as if such individual transferred to such trust on the date such trust becomes a foreign trust an amount equal to the portion of such trust attributable to the property previously transferred by such individual to such trust. A rule similar to the rule of paragraph (4)(B) shall apply for purposes of this paragraph.".

(d) MODIFICATIONS RELATING TO WHETHER TRUST HAS UNITED STATES BENEFICIARIES.—Subsection (c) of section 679 is amended by adding at the end the following new paragraph:

"(3) CERTAIN UNITED STATES BENEFICIARIES DISREGARDED.—A beneficiary shall not be treated as a United States person in applying this section with respect to any transfer of property to foreign trust if such beneficiary first became

a United States person more than 5 years after the date of such transfer.".

(e) TECHNICAL AMENDMENT.—Subparagraph (A) of section 679(c)(2) is amended to read as follows:

"(A) in the case of a foreign corporation, such corporation is a controlled foreign corporation (as defined in section 957(a)),".

(f) REGULATIONS.—Section 679 is amended by adding at the end the following new subsection:

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of property after February 6, 1995.

SEC. 11343. FOREIGN PERSONS NOT TO BE TREATED AS OWNERS UNDER GRANTOR TRUST RULES.

(a) GENERAL RULE.—

(1) Subsection (f) of section 672 (relating to special rule where grantor is foreign person) is amended to read as follows:

"(f) SUBPART NOT TO RESULT IN FOREIGN OWNERSHIP.—

"(1) IN GENERAL.—Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount being currently taken into account (directly or through 1 or more entities) under this chapter in computing the income of a citizen or resident of the United States or a domestic corporation.

"(2) EXCEPTIONS.—

"(A) CERTAIN REVOCABLE AND IRREVOCABLE TRUSTS.—Paragraph (1) shall not apply to any trust if—

"(i) the power to revest absolutely in the grantor title to the trust property is exercisable solely by the grantor without the approval or consent of any other person or with the consent of a related or subordinate party who is subservient to the grantor, or

"(ii) the only amounts distributable from such trust (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

"(B) COMPENSATORY TRUSTS.—Except as provided in regulations, paragraph (1) shall not apply to any portion of a trust distributions from which are taxable as compensation for services rendered.

"(3) SPECIAL RULES.—Except as otherwise provided in regulations prescribed by the Secretary—

"(A) a controlled foreign corporation (as defined in section 957) shall be treated as a domestic corporation for purposes of paragraph (1), and

"(B) paragraph (1) shall not apply for purposes of applying section 1296.

"(4) RECHARACTERIZATION OF PURPORTED GIFTS.—In the case of any transfer directly or indirectly from a partnership or foreign corporation which the transferee treats as a gift or bequest, the Secretary may recharacterize such transfer in such

circumstances as the Secretary determines to be appropriate to prevent the avoidance of the purposes of this subsection.

"(5) SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—If

"(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

"(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

"(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations providing that paragraph (1) shall not apply in appropriate cases.".

(2) The last sentence of subsection (c) of section 672 of such Code is amended by inserting "subsection (f) and" before "sections 674".

(b) CREDIT FOR CERTAIN TAXES.—Paragraph (2) of section 665(d) is amended by adding at the end the following new sentence: "Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term 'taxes imposed on the trust' includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust gross income.".

(c) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS THROUGH NOMINEES.—

(1) Section 643 is amended by adding at the end the following new subsection:

"(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS THROUGH NOMINEES.—For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person.".

(2) Section 665 is amended by striking subsection (c).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXCEPTION FOR CERTAIN TRUSTS.—The amendments made by this section shall not apply to any trust—

(A) which is treated as owned by the grantor or another person under section 676 or 677 (other than subsection (a)(3) thereof) of the Internal Revenue Code of 1986, and

(B) which is in existence on September 19, 1995.

The preceding sentence shall not apply to the portion of any such trust attributable to any transfer to such trust after September 19, 1995.

(e) TRANSITIONAL RULE.—If—

(1) by reason of the amendments made by this section, any person other than a United States person ceases to be treated as the owner of a portion of a domestic trust, and

(2) before January 1, 1997, such trust becomes a foreign trust, or the assets of such trust are transferred to a foreign trust,

no tax shall be imposed by section 1491 of the Internal Revenue Code of 1986 by reason of such trust becoming a foreign trust or the assets of such trust being transferred to a foreign trust.

SEC. 11344. INFORMATION REPORTING REGARDING FOREIGN GIFTS.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6039E the following new section:

"SEC. 6039F. NOTICE OF GIFTS RECEIVED FROM FOREIGN PERSONS.

"(a) IN GENERAL.—If the value of the aggregate foreign gifts received by a United States person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) during any taxable year exceeds $10,000, such United States person shall furnish (at such time and in such manner as the Secretary shall prescribe) such information as the Secretary may prescribe regarding each foreign gift received during such year.

"(b) FOREIGN GIFT.—For purposes of this section, the term 'foreign gift' means any amount received from a person other than a United States person which the recipient treats as a gift or bequest. Such term shall not include any qualified transfer (within the meaning of section 2503(e)(2)).

"(c) PENALTY FOR FAILURE TO FILE INFORMATION.—

"(1) IN GENERAL.—If a United States person fails to furnish the information required by subsection (a) with respect to any foreign gift within the time prescribed therefor (including extensions)—

"(A) the tax consequences of the receipt of such gift shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise, and

"(B) such United States person shall pay (upon notice and demand by the Secretary and in the same manner as tax) an amount equal to 5 percent of the amount of such foreign gift for each month for which the failure continues (not to exceed 25 percent of such amount in the aggregate).

"(2) REASONABLE CAUSE EXCEPTION.—Paragraph (1) shall not apply to any failure to report a foreign gift if the United States person shows that the failure is due to reasonable cause and not due to willful neglect.

"(d) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning after December 31, 1996, the $10,000 amount under subsection (a) shall be increased by an amount equal to the product of such amount and the cost-of-living adjustment for such taxable

year under section 1(f)(3), except that subparagraph (B) thereof shall be applied by substituting '1995' for '1992'.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by inserting after the item relating to section 6039E the following new item:

"Sec. 6039F. Notice of large gifts received from foreign persons.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

SEC. 11345. MODIFICATION OF RULES RELATING TO FOREIGN TRUSTS WHICH ARE NOT GRANTOR TRUSTS.

(a) MODIFICATION OF INTEREST CHARGE ON ACCUMULATION DISTRIBUTIONS.—Subsection (a) of section 668 (relating to interest charge on accumulation distributions from foreign trusts) is amended to read as follows:

"(a) GENERAL RULE.—For purposes of the tax determined under section 667(a)—

"(1) INTEREST DETERMINED USING UNDERPAYMENT RATES.—The interest charge determined under this section with respect to any distribution is the amount of interest which would be determined on the partial tax computed under section 667(b) for the period described in paragraph (2) using the rates and the method under section 6621 applicable to underpayments of tax.

"(2) PERIOD.—For purposes of paragraph (1), the period described in this paragraph is the period which begins on the date which is the applicable number of years before the date of the distribution and which ends on the date of the distribution.

"(3) APPLICABLE NUMBER OF YEARS.—For purposes of paragraph (2)—

"(A) IN GENERAL.—The applicable number of years with respect to a distribution is the number determined by dividing—

"(i) the sum of the products described in subparagraph (B) with respect to each undistributed income year, by

"(ii) the aggregate undistributed net income.

The quotient determined under the preceding sentence shall be rounded under procedures prescribed by the Secretary.

"(B) PRODUCT DESCRIBED.—For purposes of subparagraph (A), the product described in this subparagraph with respect to any undistributed income year is the product of—

"(i) the undistributed net income for such year, and

"(ii) the sum of the number of taxable years between such year and the taxable year of the distribution (counting in each case the undistributed income year but not counting the taxable year of the distribution).

"(4) UNDISTRIBUTED INCOME YEAR.—For purposes of this subsection, the term 'undistributed income year' means any

prior taxable year of the trust for which there is undistributed net income, other than a taxable year during all of which the beneficiary receiving the distribution was not a citizen or resident of the United States.

"(5) DETERMINATION OF UNDISTRIBUTED NET INCOME.—Notwithstanding section 666, for purposes of this subsection, an accumulation distribution from the trust shall be treated as reducing proportionately the undistributed net income for undistributed income years.

"(6) PERIODS BEFORE 1996.—Interest for the portion of the period described in paragraph (2) which occurs before January 1, 1996, shall be determined—

"(A) by using an interest rate of 6 percent, and

"(B) without compounding until January 1, 1996.".

(b) ABUSIVE TRANSACTIONS.—Section 643(a) is amended by inserting after paragraph (6) the following new paragraph:

"(7) ABUSIVE TRANSACTIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.".

(c) TREATMENT OF LOANS FROM TRUSTS.—

(1) IN GENERAL.—Section 643 (relating to definitions applicable to subparts A, B, C, and D) is amended by adding at the end the following new subsection:

"(i) LOANS FROM FOREIGN TRUSTS.—For purposes of subparts B, C, and D—

"(1) GENERAL RULE.—Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities directly or indirectly to—

"(A) any grantor or beneficiary of such trust who is a United States person, or

"(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary,

the amount of such loan shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) CASH.—The term 'cash' includes foreign currencies and cash equivalents.

"(B) RELATED PERSON.—

"(i) IN GENERAL.—A person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b). In applying section 267 for purposes of the preceding sentence, section 267(c)(4) shall be applied as if the family of an individual includes the spouses of the members of the family.

"(ii) ALLOCATION.—If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

"(C) EXCLUSION OF TAX-EXEMPTS.—The term 'United States person' does not include any entity exempt from tax under this chapter.

"(D) TRUST NOT TREATED AS SIMPLE TRUST.—Any trust which is treated under this subsection as making a distribution shall be treated as not described in section 651.

"(3) SUBSEQUENT TRANSACTIONS REGARDING LOAN PRINCIPAL.—If any loan is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) shall be disregarded for purposes of this title.".

(2) TECHNICAL AMENDMENT.—Paragraph (8) of section 7872(f) is amended by inserting ", 643(i)," before "or 1274" each place it appears.

(d) EFFECTIVE DATES.—

(1) INTEREST CHARGE.—The amendment made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

(2) ABUSIVE TRANSACTIONS.—The amendment made by subsection (b) shall take effect on the date of the enactment of this Act.

(3) LOANS FROM TRUSTS.—The amendment made by subsection (c) shall apply to loans of cash or marketable securities after September 19, 1995.

SEC. 11346. RESIDENCE OF ESTATES AND TRUSTS, ETC.

(a) TREATMENT AS UNITED STATES PERSON.—

(1) IN GENERAL.—Paragraph (30) of section 7701(a) is amended by striking subparagraph (D) and by inserting after subparagraph (C) the following:

"(D) any estate or trust if—

"(i) a court within the United States is able to exercise primary supervision over the administration of the estate or trust, and

"(ii) in the case of a trust, one or more United States fiduciaries have the authority to control all substantial decisions of the trust.".

(2) CONFORMING AMENDMENT.—Paragraph (31) of section 7701(a) is amended to read as follows:

"(31) FOREIGN ESTATE OR TRUST.—The term 'foreign estate' or 'foreign trust' means any estate or trust other than an estate or trust described in section 7701(a)(30)(D).".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply—

(A) to taxable years beginning after December 31, 1996, or

(B) at the election of the trustee of a trust, to taxable years ending after the date of the enactment of this Act.

Such an election, once made, shall be irrevocable.

(b) DOMESTIC TRUSTS WHICH BECOME FOREIGN TRUSTS.—

(1) IN GENERAL.—Section 1491 (relating to imposition of tax on transfers to avoid income tax) is amended by adding at the end the following new flush sentence:

“If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust.”.

(2) PENALTY.—Section 1494 is amended by adding at the end the following new subsection:

“(c) PENALTY.—In the case of any failure to file a return required by the Secretary with respect to any transfer described in section 1491 with respect to a trust, the person required to file such return shall be liable for the penalties provided in section 6677 in the same manner as if such failure were a failure to file a return under section 6048(a).”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

CHAPTER 6—TREATMENT OF INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP

SEC. 11348. REVISION OF INCOME, ESTATE, AND GIFT TAXES ON INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Subsection (a) of section 877 is amended to read as follows:

“(a) TREATMENT OF EXPATRIATES.—

“(1) IN GENERAL.—Every nonresident alien individual who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

“(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if—

“(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $100,000, or

“(B) the net worth of the individual as of such date is $500,000 or more.

In the case of the loss of United States citizenship in any calendar year after 1996, such $100,000 and $500,000 amounts shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘1994’ for ‘1992’ in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.”

(b) EXCEPTIONS.—

(1) IN GENERAL.—Section 877 is amended by striking subsection (d), by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

“(c) TAX AVOIDANCE NOT PRESUMED IN CERTAIN CASES.—

"(1) IN GENERAL.—Subsection (a)(2) shall not apply to an individual if—

"(A) such individual is described in a subparagraph of paragraph (2) of this subsection, and

"(B) within the 1-year period beginning on the date of the loss of United States citizenship, such individual submits a ruling request for the Secretary's determination as to whether such loss has for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B.

"(2) INDIVIDUALS DESCRIBED.—

"(A) DUAL CITIZENSHIP, ETC.—An individual is described in this subparagraph if—

"(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, or

"(ii) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship) a citizen of the country in which—

"(I) such individual was born,

"(II) if such individual is married, such individual's spouse was born, or

"(III) either of such individual's parents were born.

"(B) LONG-TERM FOREIGN RESIDENTS.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship, the individual was present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.

"(C) RENUNCIATION UPON REACHING AGE OF MAJORITY.—An individual is described in this subparagraph if the individual's loss of United States citizenship occurs before such individual attains age 18½.

"(D) INDIVIDUALS SPECIFIED IN REGULATIONS.—An individual is described in this subparagraph if the individual is described in a category of individuals prescribed by regulation by the Secretary."

(2) TECHNICAL AMENDMENT.—Paragraph (1) of section 877(b) of such Code is amended by striking "subsection (c)" and inserting "subsection (d)".

(c) TREATMENT OF PROPERTY DISPOSED OF IN NONRECOGNITION TRANSACTIONS; TREATMENT OF DISTRIBUTIONS FROM CERTAIN CONTROLLED FOREIGN CORPORATIONS.—Subsection (d) of section 877, as redesignated by subsection (b), is amended to read as follows:

"(d) SPECIAL RULES FOR SOURCE, ETC.—For purposes of subsection (b)—

"(1) SOURCE RULES.—The following items of gross income shall be treated as income from sources within the United States:

"(A) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

"(B) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or

debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

"(C) INCOME OR GAIN DERIVED FROM CONTROLLED FOREIGN CORPORATION.—Any income or gain derived from stock in a foreign corporation but only—

"(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

"(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(II) the total value of the stock of such corporation, and

"(ii) to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

"(2) GAIN RECOGNITION ON CERTAIN EXCHANGES.—

"(A) IN GENERAL.—In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange, and any gain shall be recognized for the taxable year which includes such date.

"(B) EXCHANGES TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any exchange during the 10-year period described in subsection (a) if—

"(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

"(ii) income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and

"(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

"(C) EXCEPTION.—Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

"(D) SECRETARY MAY EXTEND PERIOD.—To the extent provided in regulations prescribed by the Secretary, sub-

paragraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein.

"(E) SECRETARY MAY REQUIRE RECOGNITION OF GAIN IN CERTAIN CASES.—To the extent provided in regulations prescribed by the Secretary—

"(i) the removal of appreciated tangible personal property from the United States, and

"(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

"(3) SUBSTANTIAL DIMINISHING OF RISKS OF OWNERSHIP.—For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

"(A) the holding of a put with respect to such property (or similar property),

"(B) the holding by another person of a right to acquire the property, or

"(C) a short sale or any other transaction."

(d) CREDIT FOR FOREIGN TAXES IMPOSED ON UNITED STATES SOURCE INCOME.—

(1) Subsection (b) of section 877 is amended by adding at the end the following new sentence: "The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section."

(2) Subsection (a) of section 877, as amended by subsection (a), is amended by inserting "(after any reduction in such tax under the last sentence of such subsection)" after "such subsection".

(e) COMPARABLE ESTATE AND GIFT TAX TREATMENT.—

(1) ESTATE TAX.—

(A) IN GENERAL.—Subsection (a) of section 2107 is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—

"(1) RATE OF TAX.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

"(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—

"(A) IN GENERAL.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a decedent meeting the requirements of section 877(c)(1)."

(B) CREDIT FOR FOREIGN DEATH TAXES.—Subsection (c) of section 2107 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) CREDIT FOR FOREIGN DEATH TAXES.—

"(A) IN GENERAL.—The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property which is included in the gross estate solely by reason of subsection (b).

"(B) LIMITATION ON CREDIT.—The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

"(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country in respect of property included in the gross estate as the value of the property included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

"(ii) such property's proportionate share of the excess of—

"(I) the tax imposed by subsection (a), over

"(II) the tax which would be imposed by section 2101 but for this section.

"(C) PROPORTIONATE SHARE.—For purposes of subparagraph (B), a property's proportionate share is the percentage which the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate."

(C) EXPANSION OF INCLUSION IN GROSS ESTATE OF STOCK OF FOREIGN CORPORATIONS.—Paragraph (2) of section 2107(b) is amended by striking "more than 50 percent of" and all that follows and inserting "more than 50 percent of—

"(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(B) the total value of the stock of such corporation,".

(2) GIFT TAX.—

(A) IN GENERAL.—Paragraph (3) of section 2501(a) is amended to read as follows:

"(3) EXCEPTION.—

"(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor who, within the 10-year period ending with the date of transfer, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

"(B) Certain individuals treated as having tax avoidance purpose.—For purposes of subparagraph (A), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

"(C) Exception for certain individuals.—Subparagraph (B) shall not apply to a decedent meeting the requirements of section 877(c)(1).

"(D) Credit for foreign gift taxes.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph."

(f) Comparable Treatment of Lawful Permanent Residents Who Cease To Be Taxed as Residents.—

(1) In general.—Section 877 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Comparable Treatment of Lawful Permanent Residents Who Cease To Be Taxed as Residents.—

"(1) In general.—Any long-term resident of the United States who—

"(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

"(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039F in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

"(2) Long-term resident.—For purposes of this subsection, the term 'long-term resident' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in subparagraph (A) or (B) of paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

"(3) Special rules.—

"(A) Exceptions not to apply.—Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

"(B) Step-up in basis.—Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by the long-term resident on the date

the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

“(4) AUTHORITY TO EXEMPT INDIVIDUALS.—This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1).”

(2) CONFORMING AMENDMENTS.—

(A) Section 2107 is amended by striking subsection (d), by redesignating subsection (e) as subsection (d), and by inserting after subsection (d) (as so redesignated) the following new subsection:

“(e) CROSS REFERENCE.—

“For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e).”

(B) Paragraph (3) of section 2501(a) (as amended by subsection (e)) is amended by adding at the end the following new subparagraph:

“(E) CROSS REFERENCE.—

“For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e).”

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to—

(A) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

(B) long-term residents of the United States with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after February 6, 1995.

(2) SPECIAL RULE.—

(A) IN GENERAL.—In the case of an individual who performed an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)) before February 6, 1995, but who did not, on or before such date, furnish to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of such act, the amendments made by this section and section 11349 shall apply to such individual except that—

(i) the 10-year period described in section 877(a) of such Code shall not expire before the end of the 10-year

period beginning on the date such statement is so furnished, and

(ii) the 1-year period referred to in section 877(c) of such Code, as amended by this section, shall not expire before the date which is 1 year after the date of the enactment of this Act.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the individual establishes to the satisfaction of the Secretary of the Treasury that such loss of United States citizenship occurred before February 6, 1994.

SEC. 11349. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61, as amended by section 11344, is amended by inserting after section 6039F the following new section:

"SEC. 6039G. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.

"(a) IN GENERAL.—Notwithstanding any other provision of law, any individual who loses United States citizenship (within the meaning of section 877(a)) shall provide a statement which includes the information described in subsection (b). Such statement shall be—

"(1) provided not later than the earliest date of any act referred to in subsection (c), and

"(2) provided to the person or court referred to in subsection (c) with respect to such act.

"(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

"(1) the taxpayer's TIN,

"(2) the mailing address of such individual's principal foreign residence,

"(3) the foreign country in which such individual is residing,

"(4) the foreign country of which such individual is a citizen,

"(5) in the case of an individual having a net worth of at least the dollar amount applicable under section 877(a)(2)(B), information detailing the assets and liabilities of such individual, and

"(6) such other information as the Secretary may prescribe.

"(c) ACTS DESCRIBED.—For purposes of this section, the acts referred to in this subsection are—

"(1) the individual's renunciation of his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(2) the individual's furnishing to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

"(3) the issuance by the United States Department of State of a certificate of loss of nationality to the individual, or

"(4) the cancellation by a court of the United States of a naturalized citizen's certificate of naturalization.

"(d) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty for each year (of the 10-year period beginning on the date of loss of United States citizenship) during any portion of which such failure continues in an amount equal to the greater of—

"(1) 5 percent of the tax required to be paid under section 877 for the taxable year ending during such year, or

"(2) $1,000,

unless it is shown that such failure is due to reasonable cause and not to willful neglect.

"(e) INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law—

"(1) any Federal agency or court which collects (or is required to collect) the statement under subsection (a) shall provide to the Secretary—

"(A) a copy of any such statement, and

"(B) the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a),

"(2) the Secretary of State shall provide to the Secretary a copy of each certificate as to the loss of American nationality under section 358 of the Immigration and Nationality Act which is approved by the Secretary of State, and

"(3) the Federal agency primarily responsible for administering the immigration laws shall provide to the Secretary the name of each lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) whose status as such has been revoked or has been administratively or judicially determined to have been abandoned.

"(f) REPORTING BY LONG-TERM LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—In lieu of applying the last sentence of subsection (a), any individual who is required to provide a statement under this section by reason of section 877(e)(1) shall provide such statement with the return of tax imposed by chapter 1 for the taxable year during which the event described in such section occurs.

"(g) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by inserting after the item relating to section 6039F the following new item:

"Sec. 6039G. Information on individuals losing United States citizenship."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

(2) long-term residents of the United States with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after such date.

In no event shall any statement required by such amendments be due before the 90th day after the date of the enactment of this Act.

CHAPTER 7—FINANCIAL ASSET SECURITIZATION INVESTMENTS

SEC. 11351. FINANCIAL ASSET SECURITIZATION INVESTMENT TRUSTS.

(a) IN GENERAL.—Subchapter M of chapter 1 is amended by adding at the end the following new part:

"PART V—FINANCIAL ASSET SECURITIZATION INVESTMENT TRUSTS

"SEC. 860H. TAXATION OF A FASIT; OTHER GENERAL RULES.

"(a) TAXATION OF FASIT.—A FASIT as such shall not be subject to taxation under this subtitle (and shall not be treated as a trust, partnership, corporation, or taxable mortgage pool).

"(b) TAXATION OF HOLDER OF OWNERSHIP INTEREST.—In determining the taxable income of the holder of the ownership interest in a FASIT—

"(1) all assets, liabilities, and items of income, gain, deduction, loss, and credit of a FASIT shall be treated as assets, liabilities, and such items (as the case may be) of such holder,

"(2) the constant yield method (including the rules of section 1272(a)(6)) shall be applied under an accrual method of accounting in determining all interest, acquisition discount, original issue discount, and market discount and all premium deductions or adjustments with respect to all debt instruments of the FASIT,

"(3) the amount of the tax imposed by section 860L(e) (relating to tax on income from foreclosure property) shall be allowed as a deduction,

"(4) there shall not be taken into account any item of income, gain, loss, or deduction allocable to prohibited income, and

"(5) interest accrued by the FASIT which is exempt from tax imposed by this subtitle shall, when taken into account by such holder, be treated as ordinary income.

For purposes of this subtitle, securities treated as held by such holder under paragraph (1) shall be treated as held for investment.

"(c) TREATMENT OF REGULAR INTERESTS.—For purposes of this title—

"(1) a regular interest in a FASIT, if not otherwise a debt instrument, shall be treated as a debt instrument,

"(2) section 163(e)(5) shall not apply to such an interest, and

"(3) amounts includible in gross income with respect to such an interest shall be determined under an accrual method of accounting.

"SEC. 860I. GAIN RECOGNITION ON CONTRIBUTIONS TO AND DISTRIBUTIONS FROM A FASIT AND IN OTHER CASES.

"(a) CONTRIBUTIONS TO FASIT.—

"(1) IN GENERAL.—If property is contributed to a FASIT by the holder of the ownership interest in such FASIT, gain (if any) shall be recognized to such holder in an amount equal to the excess (if any) of such property's value under subsection (e) on the date of such contribution over its adjusted basis on such date.

"(2) DEBT INSTRUMENTS ACQUIRED OTHER THAN BY CONTRIBUTION BY HOLDER OF OWNERSHIP INTEREST.—For purposes of this part, any debt instrument which is acquired by a FASIT other than in a contribution by the holder of the ownership interest in the FASIT shall be treated—

"(A) as having been acquired by such holder at its fair market value on the date of its acquisition by the FASIT, and

"(B) as having been contributed by such holder to the FASIT at its value under subsection (e) on such date.

"(3) DEFERRAL OF GAIN RECOGNITION.—The Secretary may prescribe regulations which—

"(A) provide that gain otherwise recognized under paragraph (1) shall not be recognized before the earliest date on which such property supports any regular interest in such FASIT or any indebtedness of the holder of the ownership interest (or of any person related to such holder), and

"(B) provide such adjustments to the other provisions of this part to the extent appropriate in the context of the treatment provided under subparagraph (A).

"(b) CERTAIN DISTRIBUTIONS.—If a FASIT makes a distribution of property with respect to the ownership interest in the FASIT, gain (if any) shall be recognized to such FASIT on the distribution in the same manner as if the FASIT had sold such property to the distributee at its value under subsection (e) on the date of such distribution.

"(c) GAIN RECOGNITION ON PROPERTY OUTSIDE FASIT WHICH SUPPORTS REGULAR INTERESTS.—If property held by the holder of the ownership interest in a FASIT (or by any person related to such holder) supports any regular interest in such FASIT—

"(1) gain shall be recognized to such holder in the same manner as if such holder had sold such property at its value under subsection (e) on the earliest date such property supports such an interest, and

"(2) such property shall be treated as held by such FASIT for purposes of this part.

"(d) GAIN RECOGNITION ON RETAINED INTERESTS.—If—

"(1) any interest in a debt instrument is contributed to a FASIT, and

"(2) the contributor (or any person related to such contributor) retains any interest in such instrument (including a right to receive excessive servicing fees with respect to such instrument),

then gain shall be recognized to such contributor (or person) in the same manner as if the contributor (or person) had sold the retained interest at its value under subsection (e) on the date of such contribution.

"(e) VALUATION.—For purposes of this section—

"(1) IN GENERAL.—The value of any property under this subsection shall be—

"(A) in the case of property other than a debt instrument, its fair market value, and

"(B) in the case of a debt instrument, the sum of the present values of the reasonably expected payments under such instrument determined (in the manner provided by regulations prescribed by the Secretary)—

"(i) as of the date of the event resulting in the gain recognition under this section, and

"(ii) by using a discount rate equal to 120 percent of the applicable Federal rate (as defined in section 1274(d)), or such other discount rate specified in such regulations, compounded semiannually.

"(2) SPECIAL RULE FOR REVOLVING LOAN ACCOUNTS.—For purposes of paragraph (1)—

"(A) each extension of credit (other than the accrual of interest) on a revolving loan account shall be treated as a separate debt instrument, and

"(B) payments on such extensions of credit having substantially the same terms shall be applied to such extensions beginning with the earliest such extension.

"(f) SPECIAL RULES.—

"(1) NONRECOGNITION RULES NOT TO APPLY.—Gain required to be recognized under this section shall be recognized notwithstanding any other provision of this subtitle.

"(2) BASIS ADJUSTMENTS.—The basis of any property on which gain is recognized under this section shall be increased by the amount of gain so recognized.

"SEC. 860J. NON-FASIT LOSSES NOT TO OFFSET CERTAIN FASIT INCLUSIONS.

"(a) IN GENERAL.—The taxable income of the holder of the ownership interest or any high-yield interest in a FASIT for any taxable year shall in no event be less than such holder's taxable income determined solely with respect to such interests.

"(b) COORDINATION WITH SECTION 172.—Any increase in the taxable income of any holder of the ownership interest or a high-yield interest in a FASIT for any taxable year by reason of subsection (a) shall be disregarded—

"(1) in determining under section 172 the amount of any net operating loss for such taxable year, and

"(2) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

"(c) COORDINATION WITH MINIMUM TAX.—For purposes of part VI of subchapter A of this chapter—

"(1) the reference in section 55(b)(2) to taxable income shall be treated as a reference to taxable income determined without regard to this section,

"(2) the alternative minimum taxable income of any holder of the ownership interest or a high-yield interest in a FASIT for any taxable year shall in no event be less than such holder's taxable income determined solely with respect to such interests, and

"(3) any increase in taxable income under this section shall be disregarded for purposes of computing the alternative tax net operating loss deduction.

"SEC. 860K. TREATMENT OF TRANSFERS OF HIGH-YIELD INTERESTS TO DISQUALIFIED HOLDERS.

"(a) GENERAL RULE.—If any high-yield interest is held by a disqualified holder, this chapter shall be applied as if the transferor of such interest to such holder had not transferred such interest.

"(b) EXCEPTIONS.—Rules similar to the rules of paragraphs (4) and (7) of section 860E(e) shall apply to the tax imposed by reason of subsection (a).

"(c) DISQUALIFIED HOLDER.—For purposes of this section, the term 'disqualified holder' means any holder other than an eligible corporation (as defined in section 860L(a)(2)).

"(d) TREATMENT OF INTERESTS HELD BY SECURITIES DEALERS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any high-yield interest held by a disqualified holder if such holder is a dealer in securities who acquired such interest exclusively for sale to customers in the ordinary course of business (and not for investment).

"(2) CHANGE IN DEALER STATUS.—

"(A) IN GENERAL.—In the case of a dealer in securities which is not an eligible corporation (as defined in section 860L(a)(2)), if—

"(i) such dealer ceases to be a dealer in securities, or

"(ii) such dealer commences holding the high-yield interest for investment,

there is hereby imposed (in addition to other taxes) an excise tax equal to the product of the highest rate of tax specified in section 11(b)(1) and the income of such dealer attributable to such interest for periods after the date of such cessation or commencement.

"(B) HOLDING FOR 31 DAYS OR LESS.—For purposes of subparagraph (A)(ii), a dealer shall not be treated as holding an interest for investment before the 32d day after the date such dealer acquired such interest unless such interest is so held as part of a plan to avoid the purposes of this paragraph.

"(C) ADMINISTRATIVE PROVISIONS.—The deficiency procedures of subtitle F shall apply to the tax imposed by this paragraph.

"(e) TREATMENT OF HIGH-YIELD INTERESTS IN PASS-THRU ENTITIES.—If a pass-thru entity (as defined in section 860E(e)(6)) issues a debt or equity interest—

"(1) which is supported by any regular interest in a FASIT, and

"(2) which has an original yield to maturity which is greater than each of—

"(A) the sum determined under clauses (i) and (ii) of section 163(i)(1)(B) with respect to such debt or equity interest, and

"(B) the yield to maturity on such regular interest,

there is hereby imposed on the pass-thru entity a tax (in addition to other taxes) equal to the product of the highest rate of tax specified in section 11(b)(1) and the income of the holder of such debt or equity interest which is properly attributable to such regular interest. For purposes of the preceding sentence, the yield to maturity of any equity interest shall be determined under regulations prescribed by the Secretary.

"SEC. 860L. DEFINITIONS AND OTHER SPECIAL RULES.

"(a) FASIT.—

"(1) IN GENERAL.—For purposes of this title, the terms 'financial asset securitization investment trust' and 'FASIT' mean any entity—

"(A) for which an election to be treated as a FASIT applies for the taxable year,

"(B) all of the interests in which are regular interests or the ownership interest,

"(C) which has only 1 ownership interest and such ownership interest is held directly by an eligible corporation,

"(D) as of the close of the 3rd month beginning after the day of its formation and at all times thereafter, substantially all of the assets of which (including assets treated as held by the entity under section 860I(c)(2)) consist of permitted assets, and

"(E) which is not described in section 851(a).

A rule similar to the rule of the last sentence of section 860D(a) shall apply for purposes of this paragraph.

"(2) ELIGIBLE CORPORATION.—For purposes of paragraph (1)(C), the term 'eligible corporation' means any domestic C corporation other than—

"(A) a corporation which is exempt from, or is not subject to, tax under this chapter,

"(B) an entity described in section 851(a) or 856(a),

"(C) a REMIC, and

"(D) an organization to which part I of subchapter T applies.

"(3) ELECTION.—

"(A) IN GENERAL.—An entity (otherwise meeting the requirements of paragraph (1)) may elect to be treated as a FASIT. Except as provided in paragraph (5), such an election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(B) ELECTIONS MADE AFTER 1ST TAXABLE YEAR OF ENTITY.—If the election under subparagraph (A) is made after the first taxable year of the entity, all property held (or

treated as held under section 860I(c)(2)) by such entity as of the first day of the first taxable year for which such election is made shall be treated as contributed to such entity on such first day by the holder of the ownership interest in such entity.

“(4) TERMINATION.—If any entity ceases to be a FASIT at any time during the taxable year, such entity shall not be treated as a FASIT for such taxable year or any succeeding taxable year.

“(5) INADVERTENT TERMINATIONS, ETC.—Rules similar to the rules of section 860D(b)(2)(B) shall apply to inadvertent failures to qualify or remain qualified as a FASIT.

“(b) INTERESTS IN FASIT.—For purposes of this part—

“(1) REGULAR INTEREST.—

“(A) IN GENERAL.—The term ‘regular interest’ means any interest which is issued by a FASIT with fixed terms and which is designated as a regular interest if—

“(i) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount),

“(ii) except as otherwise provided by the Secretary—

“(I) in the case of a FASIT which would be treated as a REMIC if an election under section 860D(b) had been made, interest payments (or other similar amounts), if any, with respect to such interest at or before maturity meet the requirements applicable under clause (i) or (ii) of section 860G(a)(1)(B), or

“(II) in the case of any other FASIT, interest payments (or other similar amounts), if any, with respect to such interest are determined using a current rate which is reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which the regular interest is denominated,

“(iii) such interest does not have a stated maturity (including options to renew) greater than 30 years (or such longer period as may be permitted by regulations),

“(iv) the issue price of such interest does not exceed 125 percent of its stated principal amount, and

“(v) the yield to maturity on such interest is less than the sum determined under section 163(i)(1)(B) with respect to such interest.

Interest shall not fail to meet the requirements of clause (i) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent that payments on debt instruments held by the FASIT are made in advance of anticipated payments and on the amount of income from permitted assets.

“(B) HIGH-YIELD INTERESTS.—

“(i) IN GENERAL.—The term ‘regular interest’ includes any high-yield interest.

"(ii) HIGH-YIELD INTEREST.—The term 'high-yield interest' means any interest which would be described in subparagraph (A) but for failing to meet the requirements of one or more of clauses (i), (iv), or (v) thereof.

"(2) OWNERSHIP INTEREST.—The term 'ownership interest' means the interest issued by a FASIT which is designated as an ownership interest and which is not a regular interest.

"(c) PERMITTED ASSETS.—For purposes of this part—

"(1) IN GENERAL.—The term 'permitted asset' means—

"(A) cash or cash equivalents,

"(B) any debt instrument (as defined in section 1275(a)(1)) under which interest payments (or other similar amounts), if any, at or before maturity meet the requirements applicable under clause (i) or (ii) of section 860G(a)(1)(B),

"(C) foreclosure property,

"(D) any asset—

"(i) which is an interest rate or foreign currency notional principal contract, letter of credit, insurance, guarantee against payment defaults, or other similar instrument, permitted by the Secretary, and

"(ii) which is a reasonably required to guarantee or hedge against the FASIT's risks associated with being the obligor on interests issued by the FASIT, and

"(E) contract rights to acquire debt instruments described in subparagraph (B) or assets described in subparagraph (D).

"(2) DEBT ISSUED BY HOLDER OF OWNERSHIP INTEREST NOT PERMITTED ASSET.—The term 'permitted asset' shall not include any debt instrument issued by the holder of the ownership interest in the FASIT or by any person related to such holder or any direct or indirect interest in such a debt instrument. The preceding sentence shall not apply to cash equivalents and to any other investment specified in regulations prescribed by the Secretary.

"(3) FORECLOSURE PROPERTY.—The term 'foreclosure property' means property—

"(A) which would be foreclosure property under section 856(e) (determined without regard to paragraph (5) thereof) if acquired by a real estate investment trust, and

"(B) which is acquired in connection with the default or imminent default of a debt instrument held by the FASIT unless the security interest in such property was created for the principal purpose of permitting the FASIT to invest in such property.

Solely for purposes of subsection (a)(1), the determination of whether any property is foreclosure property shall be made without regard to section 856(e)(4).

"(d) TAX ON PROHIBITED TRANSACTIONS.—

"(1) IN GENERAL.—There is hereby imposed for each taxable year of a FASIT a tax equal to 100 percent of the net income derived from prohibited transactions.

"(2) PROHIBITED TRANSACTIONS.—For purposes of this part, the term 'prohibited transaction' means—

"(A) the receipt of any income derived from any asset that is not a permitted asset,

"(B) except as provided in paragraph (3), the disposition of any permitted asset,

"(C) the receipt of any income derived from any loan originated by the FASIT, and

"(D) the receipt of any income representing a fee or other compensation for services (other than any fee received as compensation for a waiver, amendment, or consent under permitted assets (other than foreclosure property) held by the FASIT).

"(3) EXCEPTION FOR INCOME FROM CERTAIN DISPOSITIONS.—

"(A) IN GENERAL.—Paragraph (2)(B) shall not apply to a disposition which would not be a prohibited transaction (as defined in section 860F(a)(2)) by reason of—

"(i) clause (ii), (iii), or (iv) of section 860F(a)(2)(A), or

"(ii) section 860F(a)(5),

if the FASIT were treated as a REMIC and debt instruments described in subsection (c)(1)(B) were treated as qualified mortgages.

"(B) SUBSTITUTION OF DEBT INSTRUMENTS; REDUCTION OF OVER-COLLATERALIZATION.—Paragraph (2)(B) shall not apply to—

"(i) the substitution of a debt instrument described in subsection (c)(1)(B) for another debt instrument which is a permitted asset, or

"(ii) the distribution of a debt instrument contributed by the holder of the ownership interest to such holder in order to reduce over-collateralization of the FASIT,

but only if a principal purpose of acquiring the debt instrument which is disposed of was not the recognition of gain (or the reduction of a loss) as a result of an increase in the market value of the debt instrument after its acquisition by the FASIT.

"(C) LIQUIDATION OF CLASS OF REGULAR INTERESTS.—Paragraph (2)(B) shall not apply to the complete liquidation of any class of regular interests.

"(4) NET INCOME.—For purposes of this subsection, net income shall be determined in accordance with section 860F(a)(3).

"(e) TAX ON INCOME FROM FORECLOSURE PROPERTY.—

"(1) IN GENERAL.—A tax is hereby imposed for each taxable year on the net income from foreclosure property of each FASIT. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

"(2) NET INCOME FROM FORECLOSURE PROPERTY.—For purposes of this part, the term 'net income from foreclosure property' means the amount which would be the FASIT's net income from foreclosure property under section 857(b)(4)(B) if the FASIT were a real estate investment trust.

"(f) COORDINATION WITH WASH SALES RULES.—Rules similar to the rules of section 860F(d) shall apply to the ownership interest in a FASIT.

"(g) RELATED PERSON.—For purposes of this part, a person (hereinafter in this subsection referred to as the 'related person') is related to any person if—

"(1) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

"(2) the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of paragraph (1), in applying section 267(b) or 707(b)(1), '20 percent' shall be substituted for '50 percent'.

"(h) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent the abuse of the purposes of this part through transactions which are not primarily related to securitization of debt instruments by a FASIT.".

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (2) of section 26(b) is amended by striking "and" at the end of subparagraph (M), by striking the period at the end of subparagraph (N) and inserting ", and", and by adding at the end the following new subparagraphs:

"(O) section 860K (relating to treatment of transfers of high-yield interests to disqualified holders).".

(2) Paragraph (6) of section 56(g) is amended by striking "or REMIC" and inserting "REMIC, or FASIT".

(3) Clause (ii) of section 382(l)(4)(B) is amended by striking "or a REMIC to which part IV of subchapter M applies" and inserting "a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies".

(4) Paragraph (1) of section 582(c) is amended by inserting ", and any regular or ownership interest in a FASIT," after "REMIC".

(5) Subparagraph (E) of section 856(c)(6) is amended by adding at the end the following new sentence: "References in the preceding provisions of this subparagraph to a REMIC shall be treated as including a reference to a FASIT.".

(6) Subparagraph (C) of section 1202(e)(4) is amended by striking "or REMIC" and inserting "REMIC, or FASIT".

(7) Clause (xi) of section 7701(a)(19)(C) is amended to read as follows:

"(xi) any regular or residual interest in a REMIC, and any regular or ownership interest in a FASIT, but only in the proportion which the assets of such REMIC or FASIT consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC or FASIT are assets described in clauses (i) through (x), the entire interest in the REMIC or FASIT shall qualify.".

(8) Subparagraph (A) of section 7701(i)(2) is amended by inserting "or a FASIT" after "a REMIC".

(c) CLERICAL AMENDMENT.—The table of parts for subchapter M of chapter 1 is amended by adding at the end the following new item:

"Part V. Financial asset securitization investment trusts.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

CHAPTER 8—DEPRECIATION PROVISIONS

SEC. 11361. TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION.

(a) TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION.—

(1) IN GENERAL.—Section 118 (relating to contributions to the capital of a corporation) is amended—

(A) by redesignating subsection (c) as subsection (e), and

(B) by inserting after subsection (b) the following new subsections:

"(c) SPECIAL RULES FOR WATER AND SEWERAGE DISPOSAL UTILITIES.—

"(1) GENERAL RULE.—For purposes of this section, the term 'contribution to the capital of the taxpayer' includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal services if—

"(A) such amount is a contribution in aid of construction,

"(B) in the case of contribution of property other than water or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

"(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for ratemaking purposes.

"(2) EXPENDITURE RULE.—An amount meets the requirements of this paragraph if—

"(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)—

"(i) which is the property for which the contribution was made or is of the same type as such property, and

"(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

"(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

"(C) accurate records are kept of the amounts contributed and expenditures made, the expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) CONTRIBUTION IN AID OF CONSTRUCTION.—The term 'contribution in aid of construction' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

"(B) PREDOMINANTLY.—The term 'predominantly' means 80 percent or more.

"(C) REGULATED PUBLIC UTILITY.—The term 'regulated public utility' has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

"(4) DISALLOWANCE OF DEDUCTIONS AND CREDITS; ADJUSTED BASIS.—Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.

"(d) STATUTE OF LIMITATIONS.—If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (c), then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

"(A) the amount of the expenditure referred to in subparagraph (A) of subsection (c)(2),

"(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

"(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2); and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(2) CONFORMING AMENDMENT.—Section 118(b) is amended by inserting "except as provided in subsection (c)," before "the term".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received after the date of the enactment of this Act.

(b) RECOVERY METHOD AND PERIOD FOR WATER UTILITY PROPERTY.—

(1) REQUIREMENT TO USE STRAIGHT LINE METHOD.—Section 168(b)(3) is amended by adding at the end the following new subparagraph:

"(F) Water utility property described in subsection (e)(5).".

(2) 25-YEAR RECOVERY PERIOD.—The table contained in section 168(c)(1) is amended by inserting the following item after the item relating to 20-year property:

"Water utility property	25 years".

(3) WATER UTILITY PROPERTY.—

(A) IN GENERAL.—Section 168(e) is amended by adding at the end the following new paragraph:

"(5) WATER UTILITY PROPERTY.—The term 'water utility property' means property—

"(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

"(B) any municipal sewer.".

(B) CONFORMING AMENDMENTS.—Section 168 is amended—

(i) by striking subparagraph (F) of subsection (e)(3), and

(ii) by striking the item relating to subparagraph (F) in the table in subsection (g)(3).

(4) ALTERNATIVE SYSTEM.—Clause (iv) of section 168(g)(2)(C) is amended by inserting "or water utility property" after "tunnel bore".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act, other than property placed in service pursuant to a binding contract in effect on such date and at all times thereafter before the property is placed in service.

SEC. 11362. DEDUCTION FOR CERTAIN OPERATING AUTHORITY.

(a) GENERAL RULE.—For purpose of chapter 1 of the Internal Revenue Code of 1986, in computing the taxable income of a taxpayer who, on January 1, 1995, held one or more operating authorities preempted by section 601 of the Federal Aviation Administration Authorization Act of 1994, the taxpayer shall be entitled to deduct ratably over the 36-month period beginning with January 1995 an amount equal to the aggregate adjusted bases of such operating authorities held by the taxpayer on January 1, 1995.

(b) TREATMENT AS DEPRECIATION.—Any deduction under subsection (a) shall be treated as a deduction for depreciation for purposes of the Internal Revenue Code of 1986.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after December 31, 1994.

SEC. 11363. CLASS LIFE FOR GAS STATION CONVENIENCE STORES AND SIMILAR STRUCTURES.

(a) IN GENERAL.—Section 168(e)(3)(E) (classifying certain property as 15-year property) 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) any section 1250 property which is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet).".

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 168(g)(3) is amended by inserting after the item relating to subparagraph (E)(ii) in the table contained therein the following new item:

"(E)(iii)	20".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property which is placed in service on or after the date of the enactment of this Act and to which section 168 of the Internal Revenue Code of 1986 applies after the amendment made by section 201 of the Tax Reform Act of 1986. A taxpayer may elect to have such amendments apply with respect to any property placed in service before such date and to which such section so applies.

CHAPTER 9—OTHER PROVISIONS

SEC. 11371. APPLICATION OF FAILURE-TO-PAY PENALTY TO SUBSTITUTE RETURNS.

(a) GENERAL RULE.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

"(g) TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(b).—In the case of any return made by the Secretary under section 6020(b)—

"(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

"(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

SEC. 11372. EXTENSION OF WITHHOLDING TO CERTAIN GAMBLING WINNINGS.

(a) REPEAL OF EXEMPTION FOR BINGO AND KENO.—Paragraph (5) of section 3402(q) is amended to read as follows:

"(5) EXEMPTION FOR SLOT MACHINES.—The tax imposed under paragraph (1) shall not apply to winnings from a slot machine.".

(b) THRESHOLD AMOUNT.—Paragraph (3) of section 3402(q) is amended—

(1) by striking "(B) and (C)" in subparagraph (A) and inserting "(B), (C), and (D)", and

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

"(D) BINGO AND KENO.—Proceeds of more than $5,000 from a wager placed in a bingo or keno game.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

SEC. 11373. LOSSES FROM FORECLOSURE PROPERTY.

(a) IN GENERAL.—Section 818(b) is amended by adding at the end the following new paragraph:

"(2) LOSSES FROM FORECLOSURE PROPERTY.—

"(A) IN GENERAL.—The amortizable portion of any loss arising from the sale or exchange of foreclosure property which (without regard to this paragraph) is treated as a capital loss shall be treated as a loss from the sale or exchange of real property used in carrying on an insurance

business which is recognized ratably over the 10-taxable year period beginning with the taxable year following the taxable year in which the sale or exchange of the foreclosure property occurred.

“(B) AMORTIZABLE PORTION.—For purposes of this paragraph—

“(i) IN GENERAL.—The amortizable portion of a loss referred to in subparagraph (A) is the percentage (not greater than 20 percent) of such loss to which the taxpayer elects to have this paragraph apply.

“(ii) SUBSEQUENT MODIFICATIONS OF AMOUNT.—The taxpayer may elect for any of the taxable years in the change period to change (subject to the limitation under clause (i)) the percentage of a loss referred to in subparagraph (A) which is treated as the amortizable portion of such loss. If the taxpayer so elects, each such changed percentage shall be treated as if it were the percentage specified in the election made under clause (i), and proper adjustments shall be made for all taxable years to reflect each such change.

“(iii) STATUTE OF LIMITATIONS.— For purposes of section 6501(h) and 6511(d)(2), any change by reason of an election under clause (ii) shall be treated as a capital loss carryback from the year such change is made.

“(iv) CHANGE PERIOD.—For purposes of clause (ii), the change period is the 3-taxable year period following the taxable year in which the sale or exchange of the foreclosure property occurred.

“(C) ELECTION TO TREAT UNAMORTIZED ORDINARY LOSSES AS CAPITAL LOSSES.—

“(i) IN GENERAL.—The taxpayer may elect to treat any unused amount of any ordinary loss described in subparagraph (A) as a capital loss arising in the taxable year for which the election under this subparagraph is made.

“(ii) LIMITATION ON ELECTION.—An election may be made under clause (i) with respect to any loss only for any taxable year in the 5-taxable year period following the taxable year referred to in subparagraph (A).

“(iii) UNUSED AMOUNT OF ORDINARY LOSS.—For purposes of clause (i), the unused amount of an ordinary loss is the amount of the amortizable portion of any loss which has not been recognized as of the close of the preceding taxable year.

“(iv) ORDERING RULE.—Any unused amount of an ordinary loss with respect to which an election was made under clause (i) shall be treated as coming first from the last taxable year in the 10-taxable year period referred to in subparagraph (A) and then from each preceding taxable year in reverse chronological order.

“(D) FORECLOSURE PROPERTY.—For purposes of this paragraph, the term ‘foreclosure property’ means any real property used in a trade or businesses (as defined in section

1231(b) without regard to this subsection) which is acquired by a life insurance company as the result of—

"(i) such company having bid on such property at foreclosure, or

"(ii) such company having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default (or default was imminent) on indebtedness which such property secured.

"(E) TIME FOR MAKING ELECTIONS.—Any election under this paragraph for any taxable year shall be made on or before the due date (including extensions) for the return of tax for such taxable year."

(b) CONFORMING AMENDMENTS.—Section 818(b) is amended—

(1) by striking "In the" and inserting:

"(1) IN GENERAL.—In the ", and

(2) by redesignating paragraphs (1) and (2) and subparagraphs (A) and (B) of paragraph (1) as subparagraphs (A) and (B) and clauses (i) and (ii) of subparagraph (A), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

SEC. 11374. NONRECOGNITION TREATMENT FOR CERTAIN TRANSFERS BY COMMON TRUST FUNDS TO REGULATED INVESTMENT COMPANIES.

(a) GENERAL RULE.—Section 584 (relating to common trust funds) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) NONRECOGNITION TREATMENT FOR CERTAIN TRANSFERS TO REGULATED INVESTMENT COMPANIES.—

"(1) IN GENERAL.—If—

"(A) pursuant to a single plan, a common trust fund transfers substantially all of its assets to one or more regulated investment companies in exchange solely for stock in the company or companies to which such assets are so transferred, and

"(B) such stock is distributed by such common trust fund to participants in such common trust fund in exchange solely for their interests in such common trust fund,

no gain or loss shall be recognized by such common trust fund by reason of such transfer or distribution, and no gain or loss shall be recognized by any participant in such common trust fund by reason of such exchange.

"(2) BASIS RULES.—

"(A) REGULATED INVESTMENT COMPANY.—The basis of any asset received by a regulated investment company in a transfer referred to in paragraph (1)(A) shall be the same as it would be in the hands of the common trust fund.

"(B) PARTICIPANTS.—The basis of the stock which is received in an exchange referred to in paragraph (1)(B) shall be the same as that of the property exchanged. If stock in more than one regulated investment company is received in such exchange, the basis determined under the preceding sentence shall be allocated among the stock in each such company on the basis of respective fair market values.

"(3) TREATMENT OF ASSUMPTIONS OF LIABILITY.—

"(A) IN GENERAL.—In determining whether the transfer referred to in paragraph (1)(A) is in exchange solely for stock in one or more regulated investment companies, the assumption by any such company of a liability of the common trust fund, and the fact that any property transferred by the common trust fund is subject to a liability, shall be disregarded.

"(B) SPECIAL RULE WHERE ASSUMED LIABILITIES EXCEED BASIS.—

"(i) IN GENERAL.—If, in any transfer referred to in paragraph (1)(A), the assumed liabilities exceed the aggregate adjusted bases (in the hands of the common trust fund) of the assets transferred to the regulated investment company or companies—

"(I) notwithstanding paragraph (1), gain shall be recognized to the common trust fund on such transfer in an amount equal to such excess,

"(II) the basis of the assets received by the regulated investment company or companies in such transfer shall be increased by the amount so recognized, and

"(III) any adjustment to the basis of a participant's interest in the common trust fund as a result of the gain so recognized shall be treated as occurring immediately before the exchange referred to in paragraph (1)(B).

If the transfer referred to in paragraph (1)(A) is to two or more regulated investment companies, the basis increase under subclause (II) shall be allocated among such companies on the basis of the respective fair market values of the assets received by each of such companies.

"(ii) ASSUMED LIABILITIES.—For purposes of clause (i), the term 'assumed liabilities' means the aggregate of—

"(I) any liability of the common trust fund assumed by any regulated investment company in connection with the transfer referred to in paragraph (1)(A), and

"(II) any liability to which property so transferred is subject.

"(4) COMMON TRUST FUND MUST MEET DIVERSIFICATION RULES.—This subsection shall not apply to any common trust fund which would not meet the requirements of section 368(a)(2)(F)(ii) if it were a corporation. For purposes of the preceding sentence, Government securities shall not be treated as securities of an issuer in applying the 25-percent and 50-percent test and such securities shall not be excluded for purposes of determining total assets under clause (iv) of section 368(a)(2)(F).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers after December 31, 1995.

SEC. 11375. EXCLUSION FOR ENERGY CONSERVATION SUBSIDIES LIMITED TO SUBSIDIES WITH RESPECT TO DWELLING UNITS.

(a) IN GENERAL.—Paragraph (1) of section 136(c) (defining energy conservation measure) is amended by striking "energy demand—" and all that follows and inserting "energy demand with respect to a dwelling unit."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 136 is amended to read as follows:

"(a) EXCLUSION.—Gross income shall not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure."

(2) Paragraph (2) of section 136(c) is amended—

(A) by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(B) by striking "AND SPECIAL RULES" in the paragraph heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after December 31, 1995, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter.

SEC. 11376. ELECTION TO CEASE STATUS AS QUALIFIED SCHOLARSHIP FUNDING CORPORATION.

(a) IN GENERAL.—Subsection (d) of section 150 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(3) ELECTION TO CEASE STATUS AS QUALIFIED SCHOLARSHIP FUNDING CORPORATION.—

"(A) IN GENERAL.—Any qualified scholarship funding bond, and qualified student loan bond, outstanding on the date of the issuer's election under this paragraph (and any bond (or series of bonds) issued to refund such a bond) shall not fail to be a tax-exempt bond solely because the issuer ceases to be described in subparagraphs (A) and (B) of paragraph (2) if the issuer meets the requirements of subparagraphs (B) and (C) of this paragraph.

"(B) ASSETS AND LIABILITIES OF ISSUER TRANSFERRED TO TAXABLE SUBSIDIARY.—The requirements of this subparagraph are met by an issuer if—

"(i) all of the student loan notes of the issuer and other assets pledged to secure the repayment of qualified scholarship funding bond indebtedness of the issuer are transferred to another corporation within a reasonable period after the election is made under this paragraph;

"(ii) such transferee corporation assumes or otherwise provides for the payment of all of the qualified scholarship funding bond indebtedness of the issuer within a reasonable period after the election is made under this paragraph;

"(iii) to the extent permitted by law, such transferee corporation assumes all of the responsibilities, and suc-

ceeds to all of the rights, of the issuer under the issuer's agreements with the Secretary of Education in respect of student loans;

"(iv) immediately after such transfer, the issuer, together with any other issuer which has made an election under this paragraph in respect of such transferee, hold all of the senior stock in such transferee corporation; and

"(v) such transferee corporation is not exempt from tax under this chapter.

"(C) ISSUER TO OPERATE AS INDEPENDENT ORGANIZATION DESCRIBED IN SECTION 501(c)(3).—The requirements of this subparagraph are met by an issuer if, within a reasonable period after the transfer referred to in subparagraph (B)—

"(i) the issuer is described in section 501(c)(3) and exempt from tax under section 501(a);

"(ii) the issuer no longer is described in subparagraphs (A) and (B) of paragraph (2); and

"(iii) at least 80 percent of the members of the board of directors of the issuer are independent members.

"(D) SENIOR STOCK.—For purposes of this paragraph, the term 'senior stock' means stock—

"(i) which participates pro rata and fully in the equity value of the corporation with all other common stock of the corporation but which has the right to payment of liquidation proceeds prior to payment of liquidation proceeds in respect of other common stock of the corporation;

"(ii) which has a fixed right upon liquidation and upon redemption to an amount equal to the greater of—

"(I) the fair market value of such stock on the date of liquidation or redemption (whichever is applicable); or

"(II) the fair market value of all assets transferred in exchange for such stock and reduced by the amount of all liabilities of the corporation which has made an election under this paragraph assumed by the transferee corporation in such transfer;

"(iii) the holder of which has the right to require the transferee corporation to redeem on a date that is not later than 10 years after the date on which an election under this paragraph was made and pursuant to such election such stock was issued; and

"(iv) in respect of which, during the time such stock is outstanding, there is not outstanding any equity interest in the corporation having any liquidation, redemption or dividend rights in the corporation which are superior to those of such stock.

"(E) INDEPENDENT MEMBER.—The term 'independent member' means a member of the board of directors of the

issuer who (except for services as a member of such board) receives no compensation directly or indirectly—

“(i) for services performed in connection with such transferee corporation, or

“(ii) for services as a member of the board of directors or as an officer of such transferee corporation.

For purposes of clause (ii), the term ‘officer’ includes any individual having powers or responsibilities similar to those of officers.

“(F) COORDINATION WITH CERTAIN PRIVATE FOUNDATION TAXES.—For purposes of sections 4942 (relating to the excise tax on a failure to distribute income) and 4943 (relating to the excise tax on excess business holdings), the transferee corporation referred to in subparagraph (B) shall be treated as a functionally related business (within the meaning of section 4942(j)(4)) with respect to the issuer during the period commencing with the date on which an election is made under this paragraph and ending on the date that is the earlier of—

“(i) the last day of the last taxable year for which more than 50 percent of the gross income of such transferee corporation is derived from, or more than 50 percent of the assets (by value) of such transferee corporation consists of, student loan notes incurred under the Higher Education Act of 1965; or

“(ii) the last day of the taxable year of the issuer during which occurs the date which is 10 years after the date on which the election under this paragraph is made.

“(G) ELECTION.—An election under this paragraph may be revoked only with the consent of the Secretary.”

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

SEC. 11377. CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS TREATED AS UNRELATED BUSINESS TAXABLE INCOME.

(a) GENERAL RULE.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

“(18) TREATMENT OF CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), any amount included in gross income under section 951(a)(1)(A) shall be included as an item of gross income derived from an unrelated trade or business to the extent the amount so included is attributable to insurance income (as defined in section 953) which, if derived directly by the organization, would be treated as gross income from an unrelated trade or business. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

“(B) EXCEPTION.—Subparagraph (A) shall not apply to income attributable to a policy of insurance or reinsurance

with respect to which the person (directly or indirectly) insured is—

"(i) such organization,

"(ii) an affiliate of such organization which is exempt from tax under section 501(a), or

"(iii) a director or officer of, or an individual who performs services for, such organization or affiliate but only if the insurance covers primarily risks associated with the performance of services for the benefit of such organization or affiliate.

For purposes of this subparagraph, the determination as to whether an entity is an affiliate of an organization shall be made under rules similar to the rules of section 168(h)(4)(B).

"(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations for the application of this paragraph in the case of income paid through 1 or more entities or between 2 or more chains of entities."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts included in gross income in any taxable year beginning after December 31, 1995.

SEC. 11378. REPEAL OF FINANCIAL INSTITUTION TRANSITION RULE TO INTEREST ALLOCATION RULES.

(a) IN GENERAL.—Paragraph (5) of section 1215(c) of the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2548) is hereby repealed.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11379. REPEAL OF BAD DEBT RESERVE METHOD FOR THRIFT SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—Section 593 (relating to reserves for losses on loans) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 50 is amended by adding at the end the following new sentence:

"Paragraphs (1)(A), (2)(A), and (4) of section 46(e) referred to in paragraph (1) of this subsection shall not apply to any taxable year beginning after December 31, 1995."

(2) Subsection (e) of section 52 is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(3) Subsection (a) of section 57 is amended by striking paragraph (4).

(4) Section 246 is amended by striking subsection (f).

(5) Clause (i) of section 291(e)(1)(B) is amended by striking "or to which section 593 applies".

(6) Subparagraph (A) of section 585(a)(2) is amended by striking "other than an organization to which section 593 applies".

(7) Sections 595 and 596 are hereby repealed.

(8) Subsection (a) of section 860E is amended—

(A) by striking "Except as provided in paragraph (2), the" in paragraph (1) and inserting "The",

(B) by striking paragraphs (2) and (4) and redesignating paragraphs (3) and (5) as paragraphs (2) and (3), respectively, and

(C) by striking in paragraph (2) (as so redesignated) all that follows "subsection" and inserting a period.

(9) Paragraph (3) of section 992(d) is amended by striking "or 593".

(10) Section 1038 is amended by striking subsection (f).

(11) Clause (ii) of section 1042(c)(4)(B) is amended by striking "or 593".

(12) Subsection (c) of section 1277 is amended by striking "or to which section 593 applies".

(13) Subparagraph (B) of section 1361(b)(2) is amended by striking "or to which section 593 applies".

(14) The table of sections for part II of subchapter H of chapter 1 is amended by striking the items relating to sections 593, 595, and 596.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1995.

(2) REPEAL OF SECTION 595.—The repeal of section 595 under subsection (b)(7) shall apply to property acquired in taxable years beginning after December 31, 1995.

(d) 6-YEAR SPREAD OF ADJUSTMENTS.—

(1) IN GENERAL.—In the case of any taxpayer who is required by reason of the amendments made by this section to change its method of computing reserves for bad debts—

(A) such change shall be treated as a change in a method of accounting,

(B) such change shall be treated as initiated by the taxpayer and as having been made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481(a)—

(i) shall be determined by taking into account only applicable excess reserves, and

(ii) as so determined, shall be taken into account ratably over the 6-taxable year period beginning with the first taxable year beginning after December 31, 1995.

(2) APPLICABLE EXCESS RESERVES.—

(A) IN GENERAL.—For purposes of paragraph (1), the term 'applicable excess reserves' means the excess (if any) of—

(i) the balance of the reserves described in section 593(c)(1) of such Code (as in effect on the day before the date of the enactment of this Act) as of the close of the taxpayer's last taxable year beginning before January 1, 1996, over

(ii) the lesser of—

(I) the balance of such reserves as of the close of the taxpayer's last taxable year beginning before January 1, 1988, or

(II) the balance of the reserves described in subclause (I), reduce by an amount determined in the same manner as under section 585(b)(2)(B)(ii) on the basis of the taxable years described in clause (i) and this clause.

(B) SPECIAL RULE FOR THRIFTS WHICH BECOME SMALL BANKS.—In the case of a bank (as defined in section 581 of such Code) which is not a large bank (as defined in section 585(c)(2) of such Code) for its first taxable year beginning after December 31, 1995—

(i) the balance taken into account under subparagraph (A)(ii) shall not be less than the amount which would be the balance of such reserve as of the close of its last taxable year beginning before January 1, 1996, if the additions to such reserve for all taxable years had been determined under section 585(b)(2)(A), and

(ii) the opening balance of the reserve for bad debts as of the beginning of such first taxable year shall be the balance taken into account under subparagraph (A)(ii) (determined after the application of clause (i) of this subparagraph).

The preceding sentence shall not apply for purposes of paragraphs (5), (6), and (7).

(3) RECAPTURE OF PRE-1988 RESERVES WHERE TAXPAYER CEASES TO BE BANK.—If during any taxable year beginning after December 31, 1995, a taxpayer to which paragraph (1) applied is not a bank (as defined in section 581), paragraph (1) shall apply to the reserves described in subparagraph (A)(ii) except that such reserves shall be taken into account ratably over the 6-taxable year period beginning with such taxable year.

(4) SUSPENSION OF RECAPTURE IF RESIDENTIAL LOAN REQUIREMENT MET.—

(A) IN GENERAL.—In the case of a bank which meets the residential loan requirement of subparagraph (B) for a taxable year beginning after December 31, 1995, and before January 1, 1998—

(i) no adjustment shall be taken into account under paragraph (1) for such taxable year, and

(ii) such taxable year shall be disregarded in determining—

(I) whether any other taxable year is a taxable year for which an adjustment is required to be taken into account under paragraph (1), and

(II) the amount of such adjustment.

(B) RESIDENTIAL LOAN REQUIREMENT.—A taxpayer meets the residential loan requirement of this subparagraph for any taxable year if the principal amount of the residential loans made by the taxpayer during such year is not less than the base amount for such year.

(C) RESIDENTIAL LOAN.—For purposes of this paragraph, the term "residential loan" means any loan de-

scribed in clause (v) of section 7701(a)(19)(C) of such Code but only if such loan is incurred in acquiring, constructing, or improving the property described in such clause.

(D) BASE AMOUNT.—For purposes of subparagraph (B), the base amount is the average of the principal amounts of the residential loans made by the taxpayer during the 6 most recent taxable years beginning before January 1, 1996. At the election of the taxpayer who made such loans during each of such 6 taxable years, the preceding sentence shall be applied without regard to the taxable year in which such principal amount was the highest and the taxable year in such principal amount was the lowest. Such an election may be made only for the first taxable year beginning after December 31, 1995, and, if made for such taxable year, shall apply to the succeeding taxable year unless revoked with the consent of the Secretary of the Treasury or his delegate.

(E) CONTROLLED GROUPS.—In the case of a taxpayer which is a member of any controlled group of corporations described in section 1563(a)(1) of such Code, subparagraph (B) shall be applied with respect to such group.

(5) CONTINUED APPLICATION OF FRESH START UNDER SECTION 585 TRANSITIONAL RULES.—In the case of a taxpayer to which paragraph (1) applied and which was not a large bank (as defined in section 585(c)(2) of such Code) for its first taxable year beginning after December 31, 1995:

(A) IN GENERAL.—For purposes of determining the net amount of adjustments referred to in section 585(c)(3)(A)(iii) of such Code, there shall be taken into account only the excess of the reserve for bad debts as of the close of the last taxable year before the disqualification year over the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection.

(B) TREATMENT UNDER ELECTIVE CUT-OFF METHOD.—For purposes of applying section 585(c)(4) of such Code—

(i) the balance of the reserve taken into account under subparagraph (B) thereof shall be reduced by the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection, and

(ii) no amount shall be includible in gross income by reason of such reduction.

(6) CONTINUED APPLICATION OF SECTION 593(e).—Notwithstanding the amendments made by this section, in the case of a taxpayer to which paragraph (1) of this subsection applies, section 593(e) of such Code (as in effect on the day before the date of the enactment of this Act) shall continue to apply to such taxpayer as if such taxpayer were a domestic building and loan association but the amount of the reserves taken into account under subparagraphs (B) and (C) of section 593(e)(1) (as so in effect) shall be the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection.

(7) CERTAIN ITEMS INCLUDED AS SECTION 381(c) ITEMS.—The balance of the applicable excess reserves, and the balance taken into account by a taxpayer under paragraph (2)(A)(ii) of

this subsection, shall be treated as items described in section 381(c) of such Code.

(8) CONVERSIONS TO CREDIT UNIONS.—In the case of a taxpayer to which paragraph (1) applied which becomes a credit union described in section 501(c)(14)(A)—

(A) any amount required to be included in the gross income of the credit union by reason of this subsection shall be treated as derived from an unrelated trade or business (as defined in section 513), and

(B) for purposes of paragraph (3), the credit union shall not be treated as if it were a bank.

(9) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out this subsection, including regulations providing for the application of paragraphs (4) and (6) in the case of acquisitions, mergers, spin-offs, and other reorganizations.

SEC. 11380. NEWSPAPER DISTRIBUTORS TREATED AS DIRECT SELLERS.

(a) IN GENERAL.—Section 3508(b)(2)(A) in amended by striking "or" at the end of clause (i), by inserting "or" at the end of clause (ii), and by inserting after clause (ii) the following new clause:

"(iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business),".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services performed after December 31, 1995.

Subtitle J—Tax Simplification

CHAPTER 1—PROVISIONS RELATING TO INDIVIDUALS

Subchapter A—Provisions Relating To Rollover of Gain on Sale of Principal Residence

SEC. 11401. MULTIPLE SALES WITHIN ROLLOVER PERIOD.

(a) GENERAL RULE.—

(1) Section 1034(d) (relating to limitation on rollover of gain on sale of principal residence), as amended by sections 11321 and 11322, is amended by striking paragraphs (1) and (2) and by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

(2) Paragraph (4) of section 1034(c) is amended to read as follows:

"(4) If the taxpayer, during the period described in subsection (a), purchases more than 1 residence which is used by him as his principal residence at some time within 2 years after the date of the sale of the old residence, only the first of such residences so used by him after the date of such sale shall constitute the new residence."

(3) Subsections (h)(1) and (k) of section 1034 are each amended by striking "(other than the 2 years referred to in subsection (c)(4))".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 11402. SPECIAL RULES IN CASE OF DIVORCE.

(a) IN GENERAL.—Subsection (c) of section 1034 is amended by adding at the end the following new paragraph:

"(5) If—

"(A) a residence is sold by an individual pursuant to a divorce or marital separation, and

"(B) the taxpayer used such residence as his principal residence at any time during the 2-year period ending on the date of such sale,

for purposes of this section, such residence shall be treated as the taxpayer's principal residence at the time of such sale."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 11403. ONE-TIME EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE FOR CERTAIN SPOUSES.

(a) IN GENERAL.—Paragraph (2) of section 121(b) (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended by adding at the end the following new sentence: "For purposes of applying the preceding sentence to individuals who are married to each other, an election by one individual with respect to a sale or exchange occurring before the marriage shall be disregarded for purposes of permitting an election with respect to property owned and used by the other individual as his principal residence throughout the 3-year period ending on the date of the marriage."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining whether an election may be made under section 121 of the Internal Revenue Code of 1986 with respect to a sale or exchange occurring after September 13, 1995.

Subchapter B—Other Provisions

SEC. 11411. TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.—

"(1) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

"(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services

shall be equal to the amount of such qualified reimbursements; and

"(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

"(2) DEFINITION OF QUALIFIED REIMBURSEMENTS.—For purposes of this subsection, the term 'qualified reimbursements' means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991."

(b) TECHNICAL AMENDMENT.—Section 6008 of the Technical and Miscellaneous Revenue Act of 1988 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11412. TREATMENT OF TRAVELING EXPENSES OF CERTAIN FEDERAL EMPLOYEES ENGAGED IN CRIMINAL INVESTIGATIONS.

(a) IN GENERAL.—Subsection (a) of section 162 is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

CHAPTER 2—PENSION SIMPLIFICATION

Subchapter A—Simplified Distribution Rules

SEC. 11421. REPEAL OF 5-YEAR INCOME AVERAGING FOR LUMP-SUM DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (d) of section 402 (relating to taxability of beneficiary of employees' trust) is amended to read as follows:

"(d) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).".

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (D) of section 402(e)(4) (relating to other rules applicable to exempt trusts) is amended to read as follows:

"(D) LUMP-SUM DISTRIBUTION.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

"(I) on account of the employee's death,

"(II) after the employee attains age 59½,

"(III) on account of the employee's separation from service, or

"(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

"(ii) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under clause (i)—

"(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

"(iii) COMMUNITY PROPERTY LAWS.—The provisions of this paragraph shall be applied without regard to community property laws.

"(iv) AMOUNTS SUBJECT TO PENALTY.—This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

"(v) BALANCE TO CREDIT OF EMPLOYEE NOT TO INCLUDE AMOUNTS PAYABLE UNDER QUALIFIED DOMESTIC RELATIONS ORDER.—For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

"(vi) TRANSFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION.—For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

"(vii) LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES.—If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.".

(2) Section 402(c) (relating to rules applicable to rollovers from exempt trusts) is amended by striking paragraph (10).

(3) Paragraph (1) of section 55(c) (defining regular tax) is amended by striking "shall not include any tax imposed by section 402(d) and".

(4) Paragraph (8) of section 62(a) (relating to certain portion of lump-sum distributions from pension plans taxed under section 402(d)) is hereby repealed.

(5) Section 401(a)(28)(B) (relating to coordination with distribution rules) is amended by striking clause (v).

(6) Subparagraph (B)(ii) of section 401(k)(10) (relating to distributions that must be lump-sum distributions) is amended to read as follows:

"(ii) LUMP-SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump-sum distribution' means any distribution of the balance to the credit of an employee immediately before the distribution.".

(7) Section 406(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(8) Section 407(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(9) Section 691(c) (relating to deduction for estate tax) is amended by striking paragraph (5).

(10) Paragraph (1) of section 871(b) (relating to imposition of tax) is amended by striking "section 1, 55, or 402(d)(1)" and inserting "section 1 or 55".

(11) Subsection (b) of section 877 (relating to alternative tax) is amended by striking "section 1, 55, or 402(d)(1)" and inserting "section 1 or 55".

(12) Section 4980A(c)(4) is amended—

(A) by striking "to which an election under section 402(d)(4)(B) applies" and inserting "(as defined in section

402(e)(4)(D)) with respect to which the individual elects to have this paragraph apply",

(B) by adding at the end the following new flush sentence:

"An individual may elect to have this paragraph apply to only one lump-sum distribution.", and

(C) by striking the heading and inserting:

"(4) SPECIAL ONE-TIME ELECTION.—".

(13) Section 402(e) is amended by striking paragraph (5).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

(2) RETENTION OF CERTAIN TRANSITION RULES.—Notwithstanding any other provision of this section, the amendments made by this section shall not apply to any distribution for which the taxpayer elects the benefits of section 1122 (h)(3) or (h)(5) of the Tax Reform Act of 1986. For purposes of the preceding sentence, the rules of sections 402(c)(10) and 402(d) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this Act) shall apply.

SEC. 11422. REPEAL OF $5,000 EXCLUSION OF EMPLOYEES' DEATH BENEFITS.

(a) IN GENERAL.—Subsection (b) of section 101 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 101 is amended by striking "subsection (a) or (b)" and inserting "subsection (a)".

(2) Sections 406(e) and 407(e) are each amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(3) Section 7701(a)(20) is amended by striking ", for the purposes of applying the provisions of section 101(b) with respect to employees' death benefits".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11423. SIMPLIFIED METHOD FOR TAXING ANNUITY DISTRIBUTIONS UNDER CERTAIN EMPLOYER PLANS.

(a) GENERAL RULE.—Subsection (d) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended to read as follows:

"(d) SPECIAL RULES FOR QUALIFIED EMPLOYER RETIREMENT PLANS.—

"(1) SIMPLIFIED METHOD OF TAXING ANNUITY PAYMENTS.—

"(A) IN GENERAL.—In the case of any amount received as an annuity under a qualified employer retirement plan—

"(i) subsection (b) shall not apply, and

"(ii) the investment in the contract shall be recovered as provided in this paragraph.

"(B) METHOD OF RECOVERING INVESTMENT IN CONTRACT.—

"(i) IN GENERAL.—Gross income shall not include so much of any monthly annuity payment under a

qualified employer retirement plan as does not exceed the amount obtained by dividing—

"(I) the investment in the contract (as of the annuity starting date), by

"(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

"(ii) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

"(iii) NUMBER OF ANTICIPATED PAYMENTS.—

"If the age of the primary annuitant on the annuity starting date is:	**The number of anticipated payments is:**
Not more than 55	360
More than 55 but not more than 60	310
More than 60 but not more than 65	260
More than 65 but not more than 70	210
More than 70	160.

"(C) ADJUSTMENT FOR REFUND FEATURE NOT APPLICABLE.—For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

"(D) SPECIAL RULE WHERE LUMP SUM PAID IN CONNECTION WITH COMMENCEMENT OF ANNUITY PAYMENTS.—If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump sum payment—

"(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

"(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

"(E) EXCEPTION.—This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

"(F) ADJUSTMENT WHERE ANNUITY PAYMENTS NOT ON MONTHLY BASIS.—In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

"(G) QUALIFIED EMPLOYER RETIREMENT PLAN.—For purposes of this paragraph, the term 'qualified employer retirement plan' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

"(2) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS.—For purposes of this section, employee contributions (and any income allocable thereto) under a

defined contribution plan may be treated as a separate contract.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in cases where the annuity starting date is after December 31, 1995.

SEC. 11424. REQUIRED DISTRIBUTIONS.

(a) IN GENERAL.—Section 401(a)(9)(C) (defining required beginning date) is amended to read as follows:

"(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'required beginning date' means April 1 of the calendar year following the later of—

"(I) the calendar year in which the employee attains age 70½, or

"(II) the calendar year in which the employee retires.

"(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

"(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

"(II) for purposes of section 408 (a)(6) or (b)(3).

"(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

"(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1995.

Subchapter B—Increased Access to Pension Plans

SEC. 11431. TAX-EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).

(a) IN GENERAL.—Subparagraph (B) of section 401(k)(4) is amended to read as follows:

"(B) ELIGIBILITY OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—

"(i) GOVERNMENTS INELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained

by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan.

"(ii) TAX-EXEMPTS ELIGIBLE.—

"(I) IN GENERAL.—Any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

"(II) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing shall be treated as an organization exempt from tax under this subtitle for purposes of subclause (I).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

Subchapter C—Nondiscrimination Provisions

SEC. 11441. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES; REPEAL OF FAMILY AGGREGATION.

(a) IN GENERAL.—Paragraph (1) of section 414(q) (defining highly compensated employee) is amended to read as follows:

"(1) IN GENERAL.—The term 'highly compensated employee' means any employee who—

"(A) was a 5-percent owner at any time during the year or the preceding year, or

"(B) for the preceding year had compensation from the employer in excess of $80,000 and was in the top-paid group of the employer.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1996.".

(b) REPEAL OF FAMILY AGGREGATION RULES.—

(1) IN GENERAL.—Paragraph (6) of section 414(q) is hereby repealed.

(2) COMPENSATION LIMIT.—Paragraph (17)(A) of section 401(a) is amended by striking the last sentence.

(3) DEDUCTION.—Subsection (l) of section 404 is amended by striking the last sentence.

(c) CONFORMING AMENDMENTS.—

(1)(A) Subsection (q) of section 414 is amended by striking paragraphs (2), (5), (8), and (12) and by redesignating paragraphs (3), (4), (7), (9), (10), and (11) as paragraphs (2) through (7), respectively.

(B) Sections 129(d)(8)(B), 401(a)(5)(D)(ii), 408(k)(2)(C), and 416(i)(1)(D) are each amended by striking "section 414(q)(7)" and inserting "section 414(q)(4)".

(C) Section 416(i)(1)(A) is amended by striking "section 414(q)(8)" and inserting "section 414(r)(9)".

(2)(A) Section 414(r) is amended by adding at the end the following new paragraph:

"(9) EXCLUDED EMPLOYEES.—For purposes of this subsection, the following employees shall be excluded:

"(A) Employees who have not completed 6 months of service.

"(B) Employees who normally work less than 17½ hours per week.

"(C) Employees who normally work not more than 6 months during any year.

"(D) Employees who have not attained the age of 21.

"(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph.".

(B) Subparagraph (A) of section 414(r)(2) is amended by striking "subsection (q)(8)" and inserting "paragraph (9)".

(3) Section 1114(c)(4) of the Tax Reform Act of 1986 is amended by adding at the end the following new sentence: "Any reference in this paragraph to section 414(q) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1995.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after December 31, 1995, except that in determining whether an employee is a highly compensated employee for years beginning in 1996, such amendments shall be treated as having been in effect for years beginning in 1995.

(2) FAMILY AGGREGATION.—The amendments made by subsection (b) shall apply to years beginning after December 31, 1995.

SEC. 11442. MODIFICATION OF ADDITIONAL PARTICIPATION REQUIREMENTS.

(a) GENERAL RULE.—Section 401(a)(26)(A) (relating to additional participation requirements) is amended to read as follows:

"(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

"(i) 50 employees of the employer, or

"(ii) the greater of—

"(I) 40 percent of all employees of the employer, or

"(II) 2 employees (or if there is only 1 employee, such employee).".

(b) SEPARATE LINE OF BUSINESS TEST.—Section 401(a)(26)(G) (relating to separate line of business) is amended by striking "paragraph (7)" and inserting "paragraph (2)(A) or (7)".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 11443. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.

(a) ALTERNATIVE METHODS OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Section 401(k) (relating to cash or deferred arrangements), as amended by this Act, is amended by adding at the end the following new paragraph:

"(12) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—

"(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

"(i) meets the contribution requirements of subparagraph (B) or (C), and

"(ii) meets the notice requirements of subparagraph (D).

"(B) MATCHING CONTRIBUTIONS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

"(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

"(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

"(ii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of this subparagraph are not met if, under the arrangement, the matching contribution with respect to any elective contribution of a highly compensated employee at any level of compensation is greater than that with respect to an employee who is not a highly compensated employee.

"(iii) ALTERNATIVE PLAN DESIGNS.—If the matching contribution with respect to any elective contribution at any specific level of compensation is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

"(I) the level of an employer's matching contribution does not increase as an employee's elective contributions increase, and

"(II) the aggregate amount of matching contributions with respect to elective contributions not in excess of such level of compensation is at least equal to the amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

"(C) NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

"(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

"(i) is sufficiently accurate and comprehensive to appraise the employee of such rights and obligations, and

"(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

"(E) OTHER REQUIREMENTS.—

"(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions).

"(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

"(F) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.".

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions), as amended by this Act, is amended by redesignating paragraph (10) as paragraph (11) and by adding after paragraph (9) the following new paragraph:

"(11) ALTERNATIVE METHOD OF SATISFYING TESTS.—

"(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(12),

"(ii) meets the notice requirements of subsection (k)(12)(D), and

"(iii) meets the requirements of subparagraph (B).

"(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

"(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

"(ii) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase, and

"(iii) the matching contribution with respect to any highly compensated employee at a specific level of compensation is not greater than that with respect to an employee who is not a highly compensated employee.".

(c) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Clause (ii) of section 401(k)(3)(A) is amended—

(A) by striking "such year" and inserting "the plan year",

(B) by striking "for such plan year" and inserting "the preceding plan year", and

(C) by adding at the end the following new sentence: "An arrangement may apply this clause by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.".

(2) MATCHING AND EMPLOYEE CONTRIBUTIONS.—Section 401(m)(2)(A) is amended—

(A) by inserting "for such plan year" after "highly compensated employee",

(B) by inserting "for the preceding plan year" after "eligible employees" each place it appears in clause (i) and clause (ii), and

(C) by adding at the end the following flush sentence: "This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided the Secretary.".

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end the following new subparagraph:

"(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

“(i) 3 percent, or

“(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.”.

(2) Paragraph (3) of section 401(m) is amended by adding at the end the following: “Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.”.

(e) DISTRIBUTION OF EXCESS CONTRIBUTIONS.—

(1) Subparagraph (C) of section 401(k)(8) (relating to arrangement not disqualified if excess contributions distributed) is amended by striking “on the basis of the respective portions of the excess contributions attributable to each of such employees” and inserting “on the basis of the amount of contributions by, or on behalf of, each of such employees”.

(2) Subparagraph (C) of section 401(m)(6) (relating to method of distributing excess aggregate contributions) is amended by striking “on the basis of the respective portions of such amounts attributable to each of such employees” and inserting “on the basis of the amount of contributions on behalf of, or by, each such employee”.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after December 31, 1998.

(2) EXCESS CONTRIBUTIONS.—The amendments made by subsection (e) shall apply to years beginning after December 31, 1995.

SEC. 11444. DEFINITION OF COMPENSATION FOR SECTION 415 PURPOSES.

(a) GENERAL RULE.—Section 415(c)(3) (defining participant’s compensation) is amended by adding at the end the following new subparagraph:

“(D) CERTAIN DEFERRALS INCLUDED.—The term ‘participant’s compensation’ shall include—

“(i) any elective deferral (as defined in section 402(g)(3)), and

“(ii) any amount which is contributed by the employer at the election of the employee and which is not includible in the gross income of the employee under section 125 or 457.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 414(q)(4), as redesignated by section 11441, is amended to read as follows:

“(7) COMPENSATION.—For purposes of this subsection, the term ‘compensation’ has the meaning given such term by section 415(c)(3).”.

(2) Section 414(s)(2) is amended by inserting “not” after “elect” in the text and heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1997.

Subchapter D—Miscellaneous Provisions

SEC. 11451. PLANS COVERING SELF-EMPLOYED INDIVIDUALS.

(a) AGGREGATION RULES.—Section 401(d) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

"(d) CONTRIBUTION LIMIT ON OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1995.

SEC. 11452. ELIMINATION OF SPECIAL VESTING RULE FOR MULTIEMPLOYER PLANS.

(a) IN GENERAL.—Paragraph (2) of section 411(a) (relating to minimum vesting standards) is amended—

(1) by striking "subparagraph (A), (B), or (C)" and inserting "subparagraph (A) or (B)"; and

(2) by striking subparagraph (C).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after the earlier of—

(1) the later of—

(A) January 1, 1996, or

(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 1998.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.

SEC. 11453. DISTRIBUTIONS UNDER RURAL COOPERATIVE PLANS.

(a) DISTRIBUTIONS FOR HARDSHIP OR AFTER A CERTAIN AGE.—Section 401(k)(7) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 59½. For purposes of this section, the term 'hardship distribution' means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limitation of its application to profit-sharing or stock bonus plans).".

(b) PUBLIC UTILITY DISTRICTS.—Clause (i) of section 401(k)(7)(B) (defining rural cooperative) is amended to read as follows:

"(i) any organization which—

"(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

"(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof)."

(c) EFFECTIVE DATES.—

(1) DISTRIBUTIONS.—The amendments made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

(2) RURAL COOPERATIVE.—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 1994.

SEC. 11454. TREATMENT OF GOVERNMENTAL PLANS UNDER SECTION 415.

(a) COMPENSATION LIMIT.—Subsection (b) of section 415 is amended by adding immediately after paragraph (10) the following new paragraph:

"(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply."

(b) TREATMENT OF CERTAIN EXCESS BENEFIT PLANS.—

(1) IN GENERAL.—Section 415 is amended by adding at the end the following new subsection:

"(m) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—

"(1) GOVERNMENTAL PLAN NOT AFFECTED.—In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.

"(2) TAXATION OF PARTICIPANT.—For purposes of this chapter—

"(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

"(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

"(3) QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT.—For purposes of this subsection, the term 'qualified governmental excess benefit arrangement' means a portion of a governmental plan if—

"(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

"(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

"(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits."

(2) COORDINATION WITH SECTION 457.—Subsection (e) of section 457 is amended by adding at the end the following new paragraph:

"(15) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—Subsections (b)(2) and (c)(1) shall not apply to any qualified governmental excess benefit arrangement (as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan."

(3) CONFORMING AMENDMENT.—Paragraph (2) of section 457(f) is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by inserting immediately thereafter the following new subparagraph:

"(E) a qualified governmental excess benefit arrangement described in section 415(m)."

(c) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Paragraph (2) of section 415(b) is amended by adding at the end the following new subparagraph:

"(I) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS PROVIDED UNDER GOVERNMENTAL PLANS.—Subparagraph (B) of paragraph (1), subparagraph (C) of this paragraph, and paragraph (5) shall not apply to—

"(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

"(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee."

(d) REVOCATION OF GRANDFATHER ELECTION.—

(1) IN GENERAL.—Subparagraph (C) of section 415(b)(10) is amended by adding at the end the following new clause:

"(ii) REVOCATION OF ELECTION.—An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the

enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.''

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 415(b)(10) is amended by striking ''This'' and inserting:

''(i) IN GENERAL.—This''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall apply to years beginning after December 31, 1994. The amendments made by subsection (d) shall apply with respect to revocations adopted after the date of the enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—Nothing in the amendments made by this section shall be construed to infer that a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) fails to satisfy the requirements of section 415 of such Code for any taxable year beginning before the date of the enactment of this Act.

SEC. 11455. UNIFORM RETIREMENT AGE.

(a) DISCRIMINATION TESTING.—Paragraph (5) of section 401(a) (relating to special rules relating to nondiscrimination requirements) is amended by adding at the end the following new subparagraph:

''(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

''(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

''(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 11456. CONTRIBUTIONS ON BEHALF OF DISABLED EMPLOYEES.

(a) ALL DISABLED PARTICIPANTS RECEIVING CONTRIBUTIONS.—Section 415(c)(3)(C) is amended by adding at the end the following: ''If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1995.

SEC. 11457. TREATMENT OF DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—Paragraph (9) of section 457(e) (relating to other definitions and special rules) is amended to read as follows:

"(9) BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

"(A) TOTAL AMOUNT PAYABLE IS $3,500 OR LESS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

"(i) such amount does not exceed $3,500, and

"(ii) such amount may be distributed only if—

"(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

"(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

"(B) ELECTION TO DEFER COMMENCEMENT OF DISTRIBUTIONS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

"(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

"(ii) the participant may make only 1 such election.".

(b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—Subsection (e) of section 457, as amended by section 11454(b)(2) (relating to governmental plans), is amended by adding at the end the following new paragraph:

"(16) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1994, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11458. TRUST REQUIREMENT FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS.

(a) IN GENERAL.—Section 457 is amended by adding at the end the following new subsection:

"(g) GOVERNMENTAL PLANS MUST MAINTAIN SET ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.—

"(1) IN GENERAL.—A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

"(2) TAXABILITY OF TRUSTS AND PARTICIPANTS.—For purposes of this title—

"(A) a trust described in paragraph (1) shall be treated as an organization exempt from taxation under section 501(a), and

"(B) notwithstanding any other provision of this title, amounts in the trust shall be includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in this section.

"(3) CUSTODIAL ACCOUNTS AND CONTRACTS.—For purposes of this subsection, custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f)."

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 457(b) is amended by inserting "except as provided in subsection (g)," before "which provides that".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to assets and income described in section 457(b)(6) of the Internal Revenue Code of 1986 held by a plan on and after the date of the enactment of this Act.

(2) TRANSITION RULE.—In the case of assets and income described in paragraph (1) held by a plan before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature of the State in which the governmental entity maintaining the plan is located beginning after the date of the enactment of this Act, a trust need not be established by reason of the amendments made by this section before such first day. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 11459. TRANSITION RULE FOR COMPUTING MAXIMUM BENEFITS UNDER SECTION 415 LIMITATIONS.

(a) IN GENERAL.—Subparagraph (A) of section 767(d)(3) of the Uruguay Round Agreements Act is amended to read as follows:

"(A) EXCEPTION.—A plan that was adopted and in effect before December 8, 1994, shall not be required to apply the amendments made by subsection (b) with respect to benefits accrued before the earlier of—

"(i) the later of the date a plan amendment applying such amendment is adopted or made effective, or

"(ii) the first day of the first limitation year beginning after December 31, 1999.

Determinations under section 415(b)(2)(E) of the Internal Revenue Code of 1986 shall be made with respect to such *benefits on the basis of such section as in effect on December 7, 1994 (except that the modification made by subsection (b) shall be taken into account), and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of such section (as so in effect).''*

(b) MODIFICATION OF CERTAIN ASSUMPTIONS FOR ADJUSTING BENEFITS OF DEFINED BENEFIT PLANS FOR EARLY RETIREES.—Subparagraph (E) of section 415(b)(2) (relating to limitation on certain assumptions) is amended—

(1) by striking ''Except as provided in clause (ii), for purposes of adjusting any benefit or limitation under subparagraph (B) or (C),'' in clause (i) and inserting ''For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B),'', and

(2) by striking ''For purposes of adjusting the benefit or limitation of any form of benefit subject to section 417(e)(3),'' in clause (ii) and inserting ''For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of section 767 of the Uruguay Round Agreements Act.

(d) TRANSITIONAL RULE.—In the case of a plan that was adopted and in effect before December 8, 1994, if—

(1) a plan amendment was adopted or made effective on or before the date of the enactment of this Act applying the amendments made by section 767(b) of the Uruguay Round Agreements Act, and

(2) within 1 year after the date of the enactment of this Act, a plan amendment is adopted which repeals the amendment referred to in paragraph (1),

the amendment referred to in paragraph (1) shall not be taken into account in applying section 767(d)(3)(A) of the Uruguay Round Agreements Act, as amended by subsection (a).

SEC. 11460. MODIFICATIONS OF SECTION 403(b).

(a) MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED.—

(1) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

(2) EFFECTIVE DATE.—This subsection shall apply to taxable years beginning after December 31, 1995.

(b) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—

(1) IN GENERAL.—In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer

which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

(2) ROLLOVERS.—Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code.

(c) ELECTIVE DEFERRALS.—

(1) IN GENERAL.—Subparagraph (E) of section 403(b)(1) is amended to read as follows:

"(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after December 31, 1995.

SEC. 11461. WAIVER OF MINIMUM PERIOD FOR JOINT AND SURVIVOR ANNUITY EXPLANATION BEFORE ANNUITY STARTING DATE.

(a) GENERAL RULE.—For purposes of section 417(a)(3)(A) of the Internal Revenue Code of 1986 (relating to plan to provide written explanations), the minimum period prescribed by the Secretary of the Treasury between the date that the explanation referred to in such section is provided and the annuity starting date shall not apply if waived by the participant and, if applicable, the participant's spouse.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to plan years beginning after December 31, 1995.

SEC. 11462. REPEAL OF LIMITATION IN CASE OF DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME EMPLOYEE; EXCESS DISTRIBUTIONS.

(a) IN GENERAL.—Section 415(e) is repealed.

(b) EXCESS DISTRIBUTIONS.—Section 4980A is amended by adding at the end the following new subsection:

"(g) LIMITATION ON APPLICATION.—This section shall not apply to distributions during years beginning after December 31, 1995, and before January 1, 1999, and such distributions shall be treated as made first from amounts not described in subsection (f)."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 415(b)(5) is amended by striking "and subsection (e)".

(2) Paragraph (1) of section 415(f) is amended by striking "subsections (b), (c), and (e)" and inserting "subsections (b) and (c)".

(3) Subsection (g) of section 415 is amended by striking "subsections (e) and (f)" in the last sentence and inserting "subsection (f)".

(4) Clause (i) of section 415(k)(2)(A) is amended to read as follows:

"(i) any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c), and".

(5) Clause (ii) of section 415(k)(2)(A) is amended by striking "subsections (c) and (e)" and inserting "subsection (c)".

(6) Section 416 is amended by striking subsection (h).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to limitation years beginning after December 31, 1998.

(2) EXCESS DISTRIBUTIONS.—The amendment made by subsection (b) shall apply to years beginning after December 31, 1995.

SEC. 11463. TAX ON PROHIBITED TRANSACTIONS.

(a) IN GENERAL.—Section 4975(a) is amended by striking "5 percent" and inserting "10 percent".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to prohibited transactions occurring after December 31, 1995.

SEC. 11464. TREATMENT OF LEASED EMPLOYEES.

(a) GENERAL RULE.—Subparagraph (C) of section 414(n)(2) (defining leased employee) is amended to read as follows:

"(C) such services are performed under primary direction or control by the recipient.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1995, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.

CHAPTER 3—TREATMENT OF LARGE PARTNERSHIPS

SEC. 11471. SIMPLIFIED FLOW-THROUGH FOR ELECTING LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subchapter K (relating to partners and partnerships) is amended by adding at the end the following new part:

"PART IV—SPECIAL RULES FOR ELECTING LARGE PARTNERSHIPS

"SEC. 771. APPLICATION OF SUBCHAPTER TO ELECTING LARGE PARTNERSHIPS.

"The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to an electing large partnership and its partners.

"SEC. 772. SIMPLIFIED FLOW-THROUGH.

"(a) GENERAL RULE.—In determining the income tax of a partner of an electing large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

"(1) taxable income or loss from passive loss limitation activities,

"(2) taxable income or loss from other activities,

"(3) net capital gain (or net capital loss)—

"(A) to the extent allocable to passive loss limitation activities, and

"(B) to the extent allocable to other activities,

"(4) tax-exempt interest,

"(5) applicable net AMT adjustment separately computed for—

"(A) passive loss limitation activities, and

"(B) other activities,

"(6) general credits,

"(7) low-income housing credit determined under section 42,

"(8) rehabilitation credit determined under section 47,

"(9) foreign income taxes,

"(10) the credit allowable under section 29, and

"(11) other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

"(b) SEPARATE COMPUTATIONS.—In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

"(c) TREATMENT AT PARTNER LEVEL.—

"(1) IN GENERAL.—Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

"(2) INCOME OR LOSS FROM PASSIVE LOSS LIMITATION ACTIVITIES.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

"(3) INCOME OR LOSS FROM OTHER ACTIVITIES.—

"(A) IN GENERAL.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

"(B) DEDUCTIONS FOR LOSS NOT SUBJECT TO SECTION 67.—The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

"(4) TREATMENT OF NET CAPITAL GAIN OR LOSS.—For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

"(5) MINIMUM TAX TREATMENT.—In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

"(6) GENERAL CREDITS.—A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

"(d) OPERATING RULES.—For purposes of this section—

"(1) PASSIVE LOSS LIMITATION ACTIVITY.—The term 'passive loss limitation activity' means—

"(A) any activity which involves the conduct of a trade or business, and

"(B) any rental activity.

For purposes of the preceding sentence, the term 'trade or business' includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

"(2) TAX-EXEMPT INTEREST.—The term 'tax-exempt interest' means interest excludable from gross income under section 103.

"(3) APPLICABLE NET AMT ADJUSTMENT.—

"(A) IN GENERAL.—The applicable net AMT adjustment is—

"(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

"(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

"(B) NET ADJUSTMENT.—The term 'net adjustment' means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

"(4) TREATMENT OF CERTAIN SEPARATELY STATED ITEMS.—

"(A) EXCLUSION FOR CERTAIN PURPOSES.—In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be), and any item referred to in subsection (a)(11), shall be excluded.

"(B) ALLOCATION RULES.—The net capital gain shall be treated—

"(i) as allocable to passive loss limitation activities to the extent the net capital gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

"(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

"(C) NET CAPITAL LOSS.—The term 'net capital loss' means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

"(5) GENERAL CREDITS.—The term 'general credits' means any credit other than the low-income housing credit, the rehabilitation credit, the foreign tax credit, and the credit allowable under section 29.

"(6) FOREIGN INCOME TAXES.—The term 'foreign income taxes' means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

"(e) SPECIAL RULE FOR UNRELATED BUSINESS TAX.—In the case of a partner which is an organization subject to tax under section 511, such partner's distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

"(f) SPECIAL RULES FOR APPLYING PASSIVE LOSS LIMITATIONS.—If any person holds an interest in an electing large partnership other than as a limited partner—

"(1) paragraph (2) of subsection (c) shall not apply to such partner, and

"(2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

"SEC. 773. COMPUTATIONS AT PARTNERSHIP LEVEL.

"(a) GENERAL RULE.—

"(1) TAXABLE INCOME.—The taxable income of an electing large partnership shall be computed in the same manner as in the case of an individual except that—

"(A) the items described in section 772(a) shall be separately stated, and

"(B) the modifications of subsection (b) shall apply.

"(2) ELECTIONS.—All elections affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be made by the partnership; except that the election under section 901, and any election under section 108, shall be made by each partner separately.

"(3) LIMITATIONS, ETC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be applied at the partnership level (and not at the partner level).

"(B) CERTAIN LIMITATIONS APPLIED AT PARTNER LEVEL.—The following provisions shall be applied at the partner level (and not at the partnership level):

"(i) Section 68 (relating to overall limitation on itemized deductions).

"(ii) Sections 49 and 465 (relating to at risk limitations).

"(iii) Section 469 (relating to limitation on passive activity losses and credits).

"(iv) Any other provision specified in regulations.

"(4) COORDINATION WITH OTHER PROVISIONS.—Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

"(b) MODIFICATIONS TO DETERMINATION OF TAXABLE INCOME.—In determining the taxable income of an electing large partnership—

"(1) CERTAIN DEDUCTIONS NOT ALLOWED.—The following deductions shall not be allowed:

"(A) The deduction for personal exemptions provided in section 151.

"(B) The net operating loss deduction provided in section 172.

"(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

"(2) CHARITABLE DEDUCTIONS.—In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

"(3) COORDINATION WITH SECTION 67.—In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

"(c) SPECIAL RULES FOR INCOME FROM DISCHARGE OF INDEBTEDNESS.—If an electing large partnership has income from the discharge of any indebtedness—

"(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

"(2) in determining the income tax of any partner of such partnership—

"(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

"(B) the provisions of section 108 shall be applied without regard to this part.

"SEC. 774. OTHER MODIFICATIONS.

"(a) TREATMENT OF CERTAIN OPTIONAL ADJUSTMENTS, ETC.—In the case of an electing large partnership—

"(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

"(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

"(b) CREDIT RECAPTURE DETERMINED AT PARTNERSHIP LEVEL.—

"(1) IN GENERAL.—In the case of an electing large partnership—

"(A) any credit recapture shall be taken into account by the partnership, and

"(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

"(2) METHOD OF TAKING RECAPTURE INTO ACCOUNT.—An electing large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

"(3) DISPOSITIONS NOT TO TRIGGER RECAPTURE.—No credit recapture shall be required by reason of any transfer of an interest in an electing large partnership.

"(4) CREDIT RECAPTURE.—For purposes of this subsection, the term 'credit recapture' means any increase in tax under section 42(j) or 50(a).

"(c) PARTNERSHIP NOT TERMINATED BY REASON OF CHANGE IN OWNERSHIP.—Subparagraph (B) of section 708(b)(1) shall not apply to an electing large partnership.

"(d) PARTNERSHIP ENTITLED TO CERTAIN CREDITS.—The following shall be allowed to an electing large partnership and shall not be taken into account by the partners of such partnership:

"(1) The credit provided by section 34.

"(2) Any credit or refund under section 852(b)(3)(D).

"(e) TREATMENT OF REMIC RESIDUALS.—For purposes of applying section 860E(e)(6) to any electing large partnership—

"(1) all interests in such partnership shall be treated as held by disqualified organizations,

"(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

"(3) subparagraph (D) of section 860E(e)(6) shall not apply.

"(f) SPECIAL RULES FOR APPLYING CERTAIN INSTALLMENT SALE RULES.—In the case of an electing large partnership—

"(1) the provisions of sections 453(l)(3) and 453A shall be applied at the partnership level, and

"(2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

"SEC. 775. ELECTING LARGE PARTNERSHIP DEFINED.

"(a) GENERAL RULE.—For purposes of this part—

“(1) IN GENERAL.—The term ‘electing large partnership’ means, with respect to any partnership taxable year, any partnership if—

“(A) the number of persons who were partners in such partnership in the preceding partnership taxable year equaled or exceeded 100, and

“(B) such partnership elects the application of this part.

To the extent provided in regulations, a partnership shall cease to be treated as an electing large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

“(2) ELECTION.—The election under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

“(b) SPECIAL RULES FOR CERTAIN SERVICE PARTNERSHIPS.—

“(1) CERTAIN PARTNERS NOT COUNTED.—For purposes of this section, the term ‘partner’ does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

“(2) EXCLUSION.—For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership if substantially all the partners of such partnership—

“(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

“(B) are retired partners who had performed such substantial services, or

“(C) are spouses of partners who are performing (or had previously performed) such substantial services.

“(3) SPECIAL RULE FOR LOWER TIER PARTNERSHIPS.—For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

“(c) EXCLUSION OF COMMODITY POOLS.—For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership the 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 such commodities.

“(d) SECRETARY MAY RELY ON TREATMENT ON RETURN.—If, on the partnership return of any partnership, such partnership is treated as an electing large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

"SEC. 776. SPECIAL RULES FOR PARTNERSHIPS HOLDING OIL AND GAS PROPERTIES.

"(a) EXCEPTION FOR PARTNERSHIPS HOLDING SIGNIFICANT OIL AND GAS PROPERTIES.—

"(1) IN GENERAL.—For purposes of this part, an election under section 775(a) shall not be effective with respect to any partnership if the average percentage of assets (by value) held by such partnership during the taxable year which are oil or gas properties is at least 25 percent. For purposes of the preceding sentence, any interest held by a partnership in another partnership shall be disregarded, except that the partnership shall be treated as holding its proportionate share of the assets of such other partnership.

"(2) ELECTION TO WAIVE EXCEPTION.—Any partnership may elect to have paragraph (1) not apply. Such an election shall apply to the partnership taxable year for which made and all subsequent partnership taxable years unless revoked with the consent of the Secretary.

"(b) SPECIAL RULES WHERE PART APPLIES.—

"(1) COMPUTATION OF PERCENTAGE DEPLETION.—In the case of an electing large partnership, except as provided in paragraph (2)—

"(A) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

"(B) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without regard to paragraph (1) of section 613A(d), and

"(C) paragraph (3) of section 705(a) shall not apply.

"(2) TREATMENT OF CERTAIN PARTNERS.—

"(A) IN GENERAL.—In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

"(B) DISQUALIFIED PERSON.—For purposes of subparagraph (A), the term 'disqualified person' means, with respect to any partnership taxable year—

"(i) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

"(ii) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

"(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), a person's average daily production of

domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

"(i) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

"(ii) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

"(iii) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

"SEC. 777. REGULATIONS.

"The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part."

(b) CLERICAL AMENDMENT.—The table of parts for subchapter K of chapter 1 is amended by adding at the end the following new item:

"Part IV. Special rules for electing large partnerships."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1995.

SEC. 11472. RETURNS MAY BE REQUIRED ON MAGNETIC MEDIA.

(a) IN GENERAL.—Paragraph (2) of section 6011(e) (relating to returns on magnetic media) is amended by adding at the end the following new sentence:

"Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1995.

CHAPTER 4—FOREIGN PROVISIONS

Subchapter A—Modifications to Treatment of Passive Foreign Investment Companies

SEC. 11481. UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS NOT SUBJECT TO PFIC INCLUSION.

Section 1296 is amended by adding at the end the following new subsection:

"(e) EXCEPTION FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—

"(1) IN GENERAL.—For purposes of this part, a corporation shall not be treated with respect to a shareholder as a passive foreign investment company during the qualified portion of such shareholder's holding period with respect to stock in such corporation.

"(2) QUALIFIED PORTION.—For purposes of this subsection, the term 'qualified portion' means the portion of the shareholder's holding period—

"(A) which is after December 31, 1995, and

"(B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

"(3) NEW HOLDING PERIOD IF QUALIFIED PORTION ENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1995, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

"(B) EXCEPTION.—Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with respect to such stock and no election under section 1298(b)(1) is made."

SEC. 11482. ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK IN PASSIVE FOREIGN INVESTMENT COMPANY.

(a) IN GENERAL.—Part VI of subchapter P of chapter 1 is amended by redesignating subpart C as subpart D, by redesignating sections 1296 and 1297 as sections 1297 and 1298, respectively, and by inserting after subpart B the following new subpart:

"Subpart C—Election of Mark to Market For Marketable Stock

"SEC. 1296. ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK.

"(a) GENERAL RULE.—In the case of marketable stock in a passive foreign investment company which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person, at the election of such person—

"(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

"(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

"(A) the amount of such excess, or

"(B) the unreversed inclusions with respect to such stock.

"(b) BASIS ADJUSTMENTS.—

"(1) IN GENERAL.—The adjusted basis of stock in a passive foreign investment company—

"(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

"(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

"(2) SPECIAL RULE FOR STOCK CONSTRUCTIVELY OWNED.—In the case of stock in a passive foreign investment company which the United States person is treated as owning under subsection (g)—

"(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

"(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

"(c) CHARACTER AND SOURCE RULES.—

"(1) ORDINARY TREATMENT.—

"(A) GAIN.—Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect), shall be treated as ordinary income.

"(B) LOSS.—Any—

"(i) amount allowed as a deduction under subsection (a)(2), and

"(ii) loss on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect) to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

"(2) SOURCE.—The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign investment company.

"(d) UNREVERSED INCLUSIONS.—For purposes of this section, the term 'unreversed inclusions' means, with respect to any stock in a passive foreign investment company, the excess (if any) of—

"(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

"(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1291.

"(e) MARKETABLE STOCK.—For purposes of this section—

"(1) IN GENERAL.—The term 'marketable stock' means—

"(A) any stock which is regularly traded on—

"(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to

section 11A of the Securities and Exchange Act of 1934, or

"(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part,

"(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, and

"(C) to the extent provided in regulations, any option on stock described in subparagraph (A) or (B).

"(2) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign investment company which it owns directly or indirectly shall be treated as marketable stock for purposes of this section. Except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other regulated investment company which publishes net asset valuations at least annually.

"(f) TREATMENT OF CONTROLLED FOREIGN CORPORATIONS WHICH ARE SHAREHOLDERS IN PASSIVE FOREIGN INVESTMENT COMPANIES.—In the case of a foreign corporation which is a controlled foreign corporation and which owns (or is treated under subsection (g) as owning) stock in a passive foreign investment company—

"(1) this section (other than subsection (c)(2)) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

"(2) for purposes of subpart F of part III of subchapter N—

"(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

"(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

"(g) STOCK OWNED THROUGH CERTAIN FOREIGN ENTITIES.—Except as provided in regulations—

"(1) IN GENERAL.—For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(2) TREATMENT OF CERTAIN DISPOSITIONS.—In any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of paragraph (1)—

"(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

"(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign investment company.

"(h) COORDINATION WITH SECTION 851(b).—For purposes of paragraphs (2) and (3) of section 851(b), any amount included in gross income under subsection (a) shall be treated as a dividend.

"(i) STOCK ACQUIRED FROM A DECEDENT.—In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).

"(j) COORDINATION WITH SECTION 1291 FOR FIRST YEAR OF ELECTION.—

"(1) TAXPAYERS OTHER THAN REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If the taxpayer elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, and if the requirements of subparagraph (B) are not satisfied, section 1291 shall apply to—

"(i) any distributions with respect to, or disposition of, such stock in the first taxable year of the taxpayer for which such election is made, and

"(ii) any amount which, but for section 1291, would have been included in gross income under subsection (a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

"(B) REQUIREMENTS.—The requirements of this subparagraph are met if, with respect to each of such corporation's taxable years for which such corporation was a passive foreign investment company and which begin after December 31, 1986, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part with respect to the taxpayer.

"(2) SPECIAL RULES FOR REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If a regulated investment company elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, then, with respect to such company's first taxable year for which such company elects the application of this section with respect to such stock—

"(i) section 1291 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

"(ii) such regulated investment company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1291(c)(3) if section 1291 were applied without regard to this subparagraph.

Clause (ii) shall not apply if for the preceding taxable year the company elected to mark to market the stock held by such company as of the last day of such preceding taxable year.

"(B) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

"(k) ELECTION.—This section shall apply to marketable stock in a passive foreign investment company which is held by a United States person only if such person elects to apply this section with respect to such stock. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless—

"(1) such stock ceases to be marketable stock, or

"(2) the Secretary consents to the revocation of such election.

"(l) TRANSITION RULE FOR INDIVIDUALS BECOMING SUBJECT TO UNITED STATES TAX.—If any individual becomes a United States person in a taxable year beginning after December 31, 1995, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign investment company owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day."

(b) COORDINATION WITH INTEREST CHARGE, ETC.—

(1) Paragraph (1) of section 1291(d) is amended by adding at the end the following new flush sentence:

"Except as provided in section 1296(j), this section also shall not apply if an election under section 1296(k) is in effect for the taxpayer's taxable year."

(2) The subsection heading for subsection (d) of section 1291 is amended by striking "SUBPART B" and inserting "SUBPARTS B AND C".

(3) Subparagraph (A) of section 1291(a)(3) is amended to read as follows:

"(A) HOLDING PERIOD.—The taxpayer's holding period shall be determined under section 1223; except that—

"(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

"(ii) if section 1296 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied."

(c) CONFORMING AMENDMENTS.—

(1) Sections 532(b)(4) and 542(c)(10) are each amended by striking "section 1296" and inserting "section 1297".

(2) Subsection (f) of section 551 is amended by striking "section 1297(b)(5)" and inserting "section 1298(b)(5)"

(3) Subsections (a)(1) and (d) of section 1293 are each amended by striking "section 1297(a)" and inserting "section 1298(a)".

(4) Paragraph (3) of section 1297(b), as redesignated by subsection (a), is hereby repealed.

(5) The table of sections for subpart D of part VI of subchapter P of chapter 1, as redesignated by subsection (a), is amended to read as follows:

"Sec. 1297. Passive foreign investment company.
"Sec. 1298. Special rules."

(6) The table of subparts for part VI of subchapter P of chapter 1 is amended by striking the last item and inserting the following new items:

"Subpart C. Election of mark to market for marketable stock.
"Subpart D. General provisions."

(d) CLARIFICATION OF GAIN RECOGNITION ELECTION.—The last sentence of section 1298(b)(1), as so redesignated, is amended by inserting "(determined without regard to the preceding sentence)" after "investment company".

SEC. 11483. MODIFICATIONS TO DEFINITION OF PASSIVE INCOME.

(a) EXCEPTION FOR SAME COUNTRY INCOME NOT TO APPLY.—Paragraph (1) of section 1297(b) (defining passive income), as redesignated by section 11482, is amended by inserting before the period "without regard to paragraph (3) thereof".

(b) PASSIVE INCOME NOT TO INCLUDE FSC INCOME.—Paragraph (2) of section 1297(b), as so redesignated, is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by inserting after subparagraph (C) the following new subparagraph:

"(D) any foreign trade income of a FSC."

SEC. 11484. EFFECTIVE DATE.

The amendments made by this subchapter shall apply to—

(1) taxable years of United States persons beginning after December 31, 1995, and

(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.

Subchapter B—Treatment of Controlled Foreign Corporations

SEC. 11486. GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.

(a) GENERAL RULE.—Section 964 (relating to miscellaneous provisions) is amended by adding at the end the following new subsection:

"(e) GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.—

"(1) IN GENERAL.—If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to

the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

"(2) SAME COUNTRY EXCEPTION NOT APPLICABLE.—Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

"(3) CLARIFICATION OF DEEMED SALES.—For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock."

(b) AMENDMENT OF SECTION 904(d).—Clause (i) of section 904(d)(2)(E) is amended by striking "and except as provided in regulations, the taxpayer was a United States shareholder in such corporation".

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to gain recognized on transactions occurring after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act.

SEC. 11487. MISCELLANEOUS MODIFICATIONS TO SUBPART F.

(a) SECTION 1248 GAIN TAKEN INTO ACCOUNT IN DETERMINING PRO RATA SHARE.—

(1) IN GENERAL.—Paragraph (2) of section 951(a) (defining pro rata share of subpart F income) is amended by adding at the end the following new sentence: "For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved."

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

(b) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—

(1) IN GENERAL.—Section 961 (relating to adjustments to basis of stock in controlled foreign corporations and of other property) is amended by adding at the end the following new subsection:

"(c) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States

shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).''

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1995.

(c) DETERMINATION OF PREVIOUSLY TAXED INCOME IN SECTION 304 DISTRIBUTIONS, ETC.—

(1) IN GENERAL.—Section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by adding at the end the following new subsection:

''(g) ADJUSTMENTS FOR CERTAIN TRANSACTIONS.—If by reason of—

''(1) a transaction to which section 304 applies,

''(2) the structure of a United States shareholder's holdings in controlled foreign corporations, or

''(3) other circumstances,

there would be a multiple inclusion of any item in income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of this subpart, the Secretary may prescribe regulations providing such modifications in the application of this subpart as may be necessary to eliminate such multiple inclusion or provide such basis adjustment, as the case may be.''

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

(d) CLARIFICATION OF TREATMENT OF BRANCH TAX EXEMPTIONS OR REDUCTIONS.—

(1) IN GENERAL.—Subsection (b) of section 952 is amended by adding at the end the following new sentence: ''For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

SEC. 11488. INDIRECT FOREIGN TAX CREDIT ALLOWED FOR CERTAIN LOWER TIER COMPANIES.

(a) SECTION 902 CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 902 (relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations) is amended to read as follows:

''(b) DEEMED TAXES INCREASED IN CASE OF CERTAIN LOWER TIER CORPORATIONS.—

''(1) IN GENERAL.—If—

''(A) any foreign corporation is a member of a qualified group, and

''(B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

"(2) QUALIFIED GROUP.—For purposes of paragraph (1), the term 'qualified group' means—

"(A) the foreign corporation described in subsection (a), and

"(B) any other foreign corporation if—

"(i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,

"(ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and

"(iii) such other corporation is not below the sixth tier in such chain.

The term 'qualified group' shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 902(c)(3) is amended by adding "or" at the end of clause (i) and by striking clauses (ii) and (iii) and inserting the following new clause:

"(ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation."

(B) Subparagraph (B) of section 902(c)(4) is amended by striking "3rd foreign corporation" and inserting "sixth tier foreign corporation".

(C) The heading for paragraph (3) of section 902(c) is amended by striking "WHERE DOMESTIC CORPORATION ACQUIRES 10 PERCENT OF FOREIGN CORPORATION" and inserting "WHERE FOREIGN CORPORATION FIRST QUALIFIES".

(D) Paragraph (3) of section 902(c) is amended by striking "ownership" each place it appears.

(b) SECTION 960 CREDIT.—Paragraph (1) of section 960(a) (relating to special rules for foreign tax credits) is amended to read as follows:

"(1) DEEMED PAID CREDIT.—For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of

such corporations beginning after the date of enactment of this Act.

(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.

SEC. 11489. REPEAL OF INCLUSION OF CERTAIN EARNINGS INVESTED IN EXCESS PASSIVE ASSETS.

(a) IN GENERAL.—

(1) REPEAL OF INCLUSION.—Paragraph (1) of section 951(a) (relating to amounts included in gross income of United States shareholders) is amended by striking subparagraph (C), by striking "; and" at the end of subparagraph (B) and inserting a period, and by adding "and" at the end of subparagraph (A).

(2) REPEAL OF INCLUSION AMOUNT.—Section 956A (relating to earnings invested in excess passive assets) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 956(b) is amended to read as follows:

"(1) APPLICABLE EARNINGS.—For purposes of this section, the term 'applicable earnings' means, with respect to any controlled foreign corporation, the sum of—

"(A) the amount (not including a deficit) referred to in section 316(a)(1), and

"(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year."

(2) Paragraph (3) of section 956(b) is amended to read as follows:

"(3) SPECIAL RULE WHERE CORPORATION CEASES TO BE CONTROLLED FOREIGN CORPORATION.—If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

"(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

"(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

"(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation."

(3) Subsection (a) of section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is

amended by adding "or" at the end of paragraph (1), by striking "or" at the end of paragraph (2), and by striking paragraph (3).

(4) Subsection (a) of section 959 is amended by striking "paragraphs (2) and (3)" in the last sentence and inserting "paragraph (2)".

(5) Subsection (c) of section 959 is amended by adding at the end the following flush sentence:

"References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1995."

(6) Paragraph (1) of section 959(f) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3)."

(7) Paragraph (2) of section 959(f) is amended by striking "subparagraphs (B) and (C) of section 951(a)(1)" and inserting "section 951(a)(1)(B)".

(8) Subsection (b) of section 989 is amended by striking "subparagraph (B) or (C) of section 951(a)(1)" and inserting "section 951(a)(1)(B)".

(9) Paragraph (9) of section 1298(b), as redesignated by section 11482, is amended by striking "subparagraph (B) or (C) of section 951(a)(1)" and inserting "section 951(a)(1)(B)".

(10) Subsections (d)(3)(B) and (e)(2)(B)(ii) of section 1298, as redesignated by section 11482, are each amended by striking "or section 956A".

(c) CLERICAL AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by striking the item relating to section 956A.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after September 30, 1995, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end.

CHAPTER 5—OTHER INCOME TAX PROVISIONS

Subchapter A—Provisions Relating to S Corporations

SEC. 11501. S CORPORATIONS PERMITTED TO HAVE 75 SHAREHOLDERS.

Subparagraph (A) of section 1361(b)(1) (defining small business corporation) is amended by striking "35 shareholders" and inserting "75 shareholders".

SEC. 11502. ELECTING SMALL BUSINESS TRUSTS.

(a) GENERAL RULE.—Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (iv) the following new clause:

"(v) An electing small business trust."

(b) CURRENT BENEFICIARIES TREATED AS SHAREHOLDERS.—Subparagraph (B) of section 1361(c)(2) is amended by adding at the end the following new clause:

"(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period."

(c) ELECTING SMALL BUSINESS TRUST DEFINED.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

"(e) ELECTING SMALL BUSINESS TRUST DEFINED.—

"(1) ELECTING SMALL BUSINESS TRUST.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'electing small business trust' means any trust if—

"(i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, or (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c) which holds a contingent interest and is not a potential current beneficiary,

"(ii) no interest in such trust was acquired by purchase, and

"(iii) an election under this subsection applies to such trust.

"(B) CERTAIN TRUSTS NOT ELIGIBLE.—The term 'electing small business trust' shall not include—

"(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust, and

"(ii) any trust exempt from tax under this subtitle.

"(C) PURCHASE.—For purposes of subparagraph (A), the term 'purchase' means any acquisition if the basis of the property acquired is determined under section 1012.

"(2) POTENTIAL CURRENT BENEFICIARY.—For purposes of this section, the term 'potential current beneficiary' means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term 'potential current beneficiary' does not include any person who first met the requirements of the preceding sentence during the 60-day period ending on the date of such disposition.

"(3) ELECTION.—An election under this subsection shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

"(4) CROSS REFERENCE.—

"For special treatment of electing small business trusts, see section 641(d)."

(d) TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—Section 641 (relating to imposition of tax on trusts) is amended by adding at the end the following new subsection:

"(d) SPECIAL RULES FOR TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—

"(1) IN GENERAL.—For purposes of this chapter—

"(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

"(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

"(2) MODIFICATIONS.—For purposes of paragraph (1), the modifications of this paragraph are the following:

"(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

"(B) The exemption amount under section 55(d) shall be zero.

"(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

"(i) The items required to be taken into account under section 1366.

"(ii) Any gain or loss from the disposition of stock in an S corporation.

"(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

"(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

"(3) TREATMENT OF REMAINDER OF TRUST AND DISTRIBUTIONS.—For purposes of determining—

"(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

"(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

"(4) TREATMENT OF UNUSED DEDUCTIONS WHERE TERMINATION OF SEPARATE TRUST.—If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

"(5) ELECTING SMALL BUSINESS TRUST.—For purposes of this subsection, the term 'electing small business trust' has the meaning given such term by section 1361(e)(1)."

(e) TECHNICAL AMENDMENT.—Paragraph (1) of section 1366(a) is amended by inserting ", or of a trust or estate which terminates," after "who dies".

SEC. 11503. EXPANSION OF POST-DEATH QUALIFICATION FOR CERTAIN TRUSTS.

Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended—

(1) by striking "60-day period" each place it appears in clauses (ii) and (iii) and inserting "2-year period", and

(2) by striking the last sentence in clause (ii).

SEC. 11504. FINANCIAL INSTITUTIONS PERMITTED TO HOLD SAFE HARBOR DEBT.

Clause (iii) of section 1361(c)(5)(B) (defining straight debt) is amended by striking "or a trust described in paragraph (2)" and inserting "a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money."

SEC. 11505. RULES RELATING TO INADVERTENT TERMINATIONS AND INVALID ELECTIONS.

(a) GENERAL RULE.—Subsection (f) of section 1362 (relating to inadvertent terminations) is amended to read as follows:

"(f) INADVERTENT INVALID ELECTIONS OR TERMINATIONS.—If—

"(1) an election under subsection (a) by any corporation—

"(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

"(B) was terminated under paragraph (2) or (3) of subsection (d),

"(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

"(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

"(A) so that the corporation is a small business corporation, or

"(B) to acquire the required shareholder consents, and

"(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary."

(b) LATE ELECTIONS.—Subsection (b) of section 1362 is amended by adding at the end the following new paragraph:

"(5) AUTHORITY TO TREAT LATE ELECTIONS AS TIMELY.—If—

"(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year, and

"(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such election as timely made for such taxable year (and paragraph (3) shall not apply)."

(c) EFFECTIVE DATE.—The amendments made by subsection (a) and (b) shall apply with respect to elections for taxable years beginning after December 31, 1982.

SEC. 11506. AGREEMENT TO TERMINATE YEAR.

Paragraph (2) of section 1377(a) (relating to pro rata share) is amended to read as follows:

"(2) ELECTION TO TERMINATE YEAR.—

"(A) IN GENERAL.—If any shareholder terminates the shareholder's interest in the corporation during the taxable year and all affected shareholders and the corporation agree to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

"(B) AFFECTED SHAREHOLDERS.—For purposes of subparagraph (A), the term 'affected shareholders' means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term 'affected shareholders' shall include all persons who are shareholders during the taxable year."

SEC. 11507. EXPANSION OF POST-TERMINATION TRANSITION PERIOD.

(a) IN GENERAL.—Paragraph (1) of section 1377(b) (relating to post-termination transition period) is amended by striking "and" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and".

(b) DETERMINATION DEFINED.—Paragraph (2) of section 1377(b) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) a determination as defined in section 1313(a), or".

(c) REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.—

(1) GENERAL RULE.—Subchapter D of chapter 63 (relating to tax treatment of subchapter S items) is hereby repealed.

(2) CONSISTENT TREATMENT REQUIRED.—Section 6037 (relating to return of S corporation) is amended by adding at the end the following new subsection:

"(c) SHAREHOLDER'S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

"(1) IN GENERAL.—A shareholder of an S corporation shall, on such shareholder's return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

"(A) IN GENERAL.—In the case of any subchapter S item, if—

"(i)(I) the corporation has filed a return but the shareholder's treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

"(II) the corporation has not filed a return, and

"(ii) the shareholder files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

"(B) SHAREHOLDER RECEIVING INCORRECT INFORMATION.—A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

"(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

"(ii) elects to have this paragraph apply with respect to that item.

"(3) EFFECT OF FAILURE TO NOTIFY.—In any case—

"(A) described in subparagraph (A)(i)(I) of paragraph (2), and

"(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

"(4) SUBCHAPTER S ITEM.—For purposes of this subsection, the term 'subchapter S item' means any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the corporation level than at the shareholder level.

"(5) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68."

(3) CONFORMING AMENDMENTS.—

(A) Section 1366 is amended by striking subsection (g).

(B) Subsection (b) of section 6233 is amended to read as follows:

"(b) SIMILAR RULES IN CERTAIN CASES.—If a partnership return is filed for any taxable year but it is determined that there is

no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.''

(C) The table of subchapters for chapter 63 is amended by striking the item relating to subchapter D.

SEC. 11508. S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.

(a) IN GENERAL.—Paragraph (2) of section 1361(b) (defining ineligible corporation) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(b) TREATMENT OF CERTAIN WHOLLY OWNED S CORPORATION SUBSIDIARIES.—Section 1361(b) (defining small business corporation) is amended by adding at the end the following new paragraph:

''(3) TREATMENT OF CERTAIN WHOLLY OWNED SUBSIDIARIES.—

''(A) IN GENERAL.—For purposes of this title—

''(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

''(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

''(B) QUALIFIED SUBCHAPTER S SUBSIDIARY.—For purposes of this paragraph, the term 'qualified subchapter S subsidiary' means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if—

''(i) 100 percent of the stock of such corporation is held by the S corporation, and

''(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

''(C) TREATMENT OF TERMINATIONS OF QUALIFIED SUBCHAPTER S SUBSIDIARY STATUS.—For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.''

(c) CERTAIN DIVIDENDS NOT TREATED AS PASSIVE INVESTMENT INCOME.—Paragraph (3) of section 1362(d) is amended by adding at the end the following new subparagraph:

''(F) TREATMENT OF CERTAIN DIVIDENDS.—If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term 'passive investment income' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.''

(d) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 1361 is amended by striking paragraph (6).

(2) Subsection (b) of section 1504 (defining includible corporation) is amended by adding at the end the following new paragraph:

"(8) An S corporation."

SEC. 11509. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.

(a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO ACCOUNT BEFORE LOSSES.—

(1) Subparagraph (A) of section 1366(d)(1) (relating to losses and deductions cannot exceed shareholder's basis in stock and debt) is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (2)(A)".

(2) Subsection (d) of section 1368 (relating to certain adjustments taken into account) is amended by adding at the end the following new sentence:

"In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year."

(b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Paragraph (1) of section 1368(e) (relating to accumulated adjustments account) is amended by adding at the end the following new subparagraph:

"(C) NET LOSS FOR YEAR DISREGARDED.—

"(i) IN GENERAL.—In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

"(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term 'net negative adjustment' means, with respect to any taxable year, the excess (if any) of—

"(I) the reductions in the account for the taxable year (other than for distributions), over

"(II) the increases in such account for such taxable year."

(c) CONFORMING AMENDMENTS.—Subparagraph (A) of section 1368(e)(1) is amended—

(1) by striking "as provided in subparagraph (B)" and inserting "as otherwise provided in this paragraph", and

(2) by striking "section 1367(b)(2)(A)" and inserting "section 1367(a)(2)".

SEC. 11510. TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.

Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

"(a) APPLICATION OF SUBCHAPTER C RULES.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders."

SEC. 11511. ELIMINATION OF CERTAIN EARNINGS AND PROFITS.

(a) IN GENERAL.—If—

(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1995,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 1362(d) is amended—

(A) by striking "SUBCHAPTER C" in the paragraph heading and inserting "ACCUMULATED",

(B) by striking "subchapter C" in subparagraph (A)(i)(I) and inserting "accumulated", and

(C) by striking subparagraph (B) and redesignating the following subparagraphs accordingly.

(2)(A) Subsection (a) of section 1375 is amended by striking "subchapter C" in paragraph (1) and inserting "accumulated".

(B) Paragraph (3) of section 1375(b) is amended to read as follows:

"(3) PASSIVE INVESTMENT INCOME, ETC.—The terms 'passive investment income' and 'gross receipts' have the same respective meanings as when used in paragraph (3) of section 1362(d)."

*(C) The section heading for section 1375 is amended by striking "**SUBCHAPTER C**" and inserting "**ACCUMULATED**".*

(D) The table of sections for part III of subchapter S of chapter 1 is amended by striking "subchapter C" in the item relating to section 1375 and inserting "accumulated".

(3) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(D)" and inserting "section 1362(d)(3)(C)".

SEC. 11512. CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS UNDER AT-RISK RULES ALLOWED.

Paragraph (3) of section 1366(d) (relating to carryover of disallowed losses and deductions to post-termination transition period) is amended by adding at the end the following new subparagraph:

"(D) AT-RISK LIMITATIONS.—To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a)."

SEC. 11513. ADJUSTMENTS TO BASIS OF INHERITED S STOCK TO REFLECT CERTAIN ITEMS OF INCOME.

(a) IN GENERAL.—Subsection (b) of section 1367 (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end the following new paragraph:

"(4) ADJUSTMENTS IN CASE OF INHERITED STOCK.—

"(A) IN GENERAL.—If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

"(B) ADJUSTMENTS TO BASIS.—The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of decedents dying after the date of the enactment of this Act.

SEC. 11514. S CORPORATIONS ELIGIBLE FOR RULES APPLICABLE TO REAL PROPERTY SUBDIVIDED FOR SALE BY NONCORPORATE TAXPAYERS.

(a) IN GENERAL.—Subsection (a) of section 1237 (relating to real property subdivided for sale) is amended by striking "other than a corporation" in the material preceding paragraph (1) and inserting "other than a C corporation".

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 1237(a)(2) is amended by inserting "an S corporation which included the taxpayer as a shareholder," after "controlled by the taxpayer,".

SEC. 11515. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this subchapter, the amendments made by this subchapter shall apply to taxable years beginning after December 31, 1995.

(b) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of such Code in a taxable year beginning before January 1, 1996, shall not be taken into account.

Subchapter B—Repeal of 30-Percent Gross Income Limitation on Regulated Investment Companies

SEC. 11521. REPEAL OF 30-PERCENT GROSS INCOME LIMITATION.

(a) GENERAL RULE.—Subsection (b) of section 851 (relating to limitations) is amended by striking paragraph (3), by adding "and" at the end of paragraph (2), and by redesignating paragraph (4) as paragraph (3).

(b) TECHNICAL AMENDMENTS.—

(1) The material following paragraph (3) of section 851(b) (as redesignated by subsection (a)) is amended—

(A) by striking out "paragraphs (2) and (3)" and inserting "paragraph (2)", and

(B) by striking out the last sentence thereof.

(2) Subsection (c) of section 851 is amended by striking "subsection (b)(4)" each place it appears (including the heading) and inserting "subsection (b)(3)".

(3) Subsection (d) of section 851 is amended by striking "subsections (b)(4)" and inserting "subsections (b)(3)".

(4) Paragraph (1) of section 851(e) is amended by striking "subsection (b)(4)" and inserting "subsection (b)(3)".

(5) Paragraph (4) of section 851(e) is amended by striking "subsections (b)(4)" and inserting "subsections (b)(3)".

(6) Section 851 is amended by striking subsection (g) and redesignating subsection (h) as subsection (g).

(7) Subsection (g) of section 851 (as redesignated by paragraph (6)) is amended by striking paragraph (3).

(8) Section 817(h)(2) is amended—

(A) by striking "851(b)(4)" in subparagraph (A) and inserting "851(b)(3)", and

(B) by striking "851(b)(4)(A)(i)" in subparagraph (B) and inserting "851(b)(3)(A)(i)".

(9) Section 1092(f)(2) is amended by striking "Except for purposes of section 851(b)(3), the" and inserting "The".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

Subchapter C—Accounting Provisions

SEC. 11551. MODIFICATIONS TO LOOK-BACK METHOD FOR LONG-TERM CONTRACTS.

(a) LOOK-BACK METHOD NOT TO APPLY IN CERTAIN CASES.—Subsection (b) of section 460 (relating to percentage of completion method) is amended by adding at the end the following new paragraph:

"(6) ELECTION TO HAVE LOOK-BACK METHOD NOT APPLY IN DE MINIMIS CASES.—

"(A) AMOUNTS TAKEN INTO ACCOUNT AFTER COMPLETION OF CONTRACT.—Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

"(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

"(B) DE MINIMIS DISCREPANCIES.—Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

"(ii) 10 percent of the cumulative look-back income (or loss) under the contract as of the close of such prior contract year.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) CONTRACT YEAR.—The term 'contract year' means any taxable year for which income is taken into account under the contract.

"(ii) LOOK-BACK INCOME OR LOSS.—The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the allocation method set forth in paragraph (2)(A) were used in determining taxable income.

"(iii) DISCOUNTING NOT APPLICABLE.—The amounts taken into account after the completion of the

contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

"(D) CONTRACTS TO WHICH PARAGRAPH APPLIES.—This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all long-term contracts completed during the taxable year for which election is made or during any subsequent taxable year."

(b) MODIFICATION OF INTEREST RATE.—

(1) IN GENERAL.—Subparagraph (C) of section 460(b)(2) is amended by striking "the overpayment rate established by section 6621" and inserting "the adjusted overpayment rate (as defined in paragraph (7))".

(2) ADJUSTED OVERPAYMENT RATE.—Subsection (b) of section 460 is amended by adding at the end the following new paragraph:

"(7) ADJUSTED OVERPAYMENT RATE.—

"(A) IN GENERAL.—The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

"(B) INTEREST ACCRUAL PERIOD.—For purposes of subparagraph (A), the term 'interest accrual period' means the period—

"(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

"(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term 'return due date' means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts completed in taxable years ending after the date of the enactment of this Act.

SEC. 11552. APPLICATION OF MARK TO MARKET ACCOUNTING METHOD TO TRADERS IN SECURITIES.

(a) IN GENERAL.—Section 475 (relating to mark to market accounting method for dealers in securities) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) AUTHORITY TO EXTEND METHOD TO TRADERS IN SECURITIES.—

"(1) IN GENERAL.—A trader in securities may elect to have the provisions of this section (other than subsection (d)(3)) apply to securities held by the trader. Such election may be made only with the consent of the Secretary.

"(2) TRADER IN SECURITIES.—For purposes of this subsection, the term 'trader in securities' means a taxpayer who is regularly engaged in trading securities."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on and after December 31, 1995.

SEC. 11553. MODIFICATION OF RULING AMOUNTS FOR NUCLEAR DECOMMISSIONING COSTS.

(a) IN GENERAL.—Section 468A(d) (relating to ruling amount) is amended by adding at the end the following new paragraph:

"(4) NONSUBSTANTIAL MODIFICATIONS.—A taxpayer may modify a schedule of ruling amounts under paragraph (1) without a review under paragraph (3) if such modification does not substantially modify the ruling amount. The taxpayer shall notify the Secretary of any such modification."

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

Subchapter D—Tax-Exempt Bond Provision

SEC. 11561. REPEAL OF DEBT SERVICE-BASED LIMITATION ON INVESTMENT IN CERTAIN NONPURPOSE INVESTMENTS.

(a) IN GENERAL.—Subsection (d) of section 148 (relating to special rules for reasonably required reserve or replacement fund) is amended by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by this part shall apply to bonds issued after the date of the enactment of this Act.

Subchapter E—INSURANCE PROVISIONS

SEC. 11571. TREATMENT OF CERTAIN INSURANCE CONTRACTS ON RETIRED LIVES.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 817(d) (defining variable contract) is amended by striking "or" at the end of subparagraph (A), by striking "and" at the end of subparagraph (B) and inserting "or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and".

(2) Paragraph (3) of section 817(d) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 11572. TREATMENT OF MODIFIED GUARANTEED CONTRACTS.

(a) GENERAL RULE.—Subpart E of part I of subchapter L of chapter 1 (relating to definitions and special rules) is amended by inserting after section 817 the following new section:

"SEC. 817A. SPECIAL RULES FOR MODIFIED GUARANTEED CONTRACTS.

"(a) COMPUTATION OF RESERVES.—In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

"(b) SEGREGATED ASSETS UNDER MODIFIED GUARANTEED CONTRACTS MARKED TO MARKET.—

"(1) IN GENERAL.—In the case of any life insurance company, for purposes of this subtitle—

"(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

"(B) If any segregated asset is held by such company as of the close of any taxable year—

"(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

"(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

"(2) SEGREGATED ASSET.—For purposes of paragraph (1), the term 'segregated asset' means any asset held as part of a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

"(c) SPECIAL RULE IN COMPUTING LIFE INSURANCE RESERVES.—For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

"(d) MODIFIED GUARANTEED CONTRACT DEFINED.—For purposes of this section, the term 'modified guaranteed contract' means a contract not described in section 817—

"(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

"(2) which—

"(A) provides for the payment of annuities,

"(B) is a life insurance contract, or

"(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

"(3) for which reserves are valued at market for annual statement purposes, and

"(4) which provides for a net surrender value or a policyholder's fund (as defined in section 807(e)(1)).

If only a portion of a contract is not described in section 817, such portion shall be treated for purposes of this section as a separate contract.

"(e) REGULATIONS.—The Secretary may prescribe regulations—

"(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

"(2) to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B), and 812 with respect to a modified

guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d),

"(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

"(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

"(5) as may be necessary or appropriate to carry out the purposes of this section.".

(b) CLERICAL AMENDMENT.—The table of sections for subpart E of part I of subchapter L of chapter 1 is amended by inserting after the item relating to section 817 the following new item:

"Sec. 817A. Special rules for modified guaranteed contracts.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

(2) TREATMENT OF NET ADJUSTMENTS.—In the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

(B) such changes shall be treated as made with the consent of the Secretary, and

(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986 shall be taken into account as ordinary income or loss by the taxpayer for the taxpayer's first taxable year beginning after December 31, 1995.

Subchapter F—Other Provisions

SEC. 11581. CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER, ETC.

(a) GENERAL RULE.—Subparagraph (A) of section 706(c)(2) (relating to disposition of entire interest) is amended to read as follows:

"(A) DISPOSITION OF ENTIRE INTEREST.—The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise)."

(b) CLERICAL AMENDMENT.—The paragraph heading for paragraph (2) of section 706(c) is amended to read as follows:

"(2) TREATMENT OF DISPOSITIONS.—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1995.

SEC. 11582. CREDIT FOR SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

(a) REPORTING REQUIREMENT NOT CONSIDERED.—Subparagraph (A) of section 45B(b)(1) (relating to excess employer social se-

curity tax) is amended by inserting "(without regard to whether such tips are reported under section 6053)" after "section 3121(q)".

(b) TAXES PAID.—Subsection (d) of section 13443 of the Revenue Reconciliation Act of 1993 is amended by inserting ", with respect to services performed before, on, or after such date" after "1993".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by, and the provisions of, section 13443 of the Revenue Reconciliation Act of 1993.

SEC. 11583. DUE DATE FOR FIRST QUARTER ESTIMATED TAX PAYMENTS BY PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Paragraph (3) of section 6655(g) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) In the case of any private foundation, subsection (c)(2) shall be applied by substituting 'May 15' for 'April 15' ".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

CHAPTER 6—ESTATES AND TRUSTS

Subchapter A—Income Tax Provisions

SEC. 11601. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE.

(a) IN GENERAL.—Subpart A of part I of subchapter J (relating to estates, trusts, beneficiaries, and decedents) is amended by adding at the end the following new section:

"SEC. 646. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE.

"(a) GENERAL RULE.—For purposes of this subtitle, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

"(b) DEFINITIONS.—For purposes of subsection (a)—

"(1) QUALIFIED REVOCABLE TRUST.—The term 'qualified revocable trust' means any trust (or portion thereof) which was treated under section 676 as owned by the decedent of the estate referred to in subsection (a) by reason of a power in the grantor (determined without regard to section 672(e)).

"(2) APPLICABLE DATE.—The term 'applicable date' means—

"(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and

"(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

"(c) ELECTION.—The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable."

(b) COMPARABLE TREATMENT UNDER GENERATION-SKIPPING TAX.—Paragraph (1) of section 2652(b) is amended by adding at the end the following new sentence: "Such term shall not include any trust during any period the trust is treated as part of an estate under section 646."

(c) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end the following new item:

"Sec. 646. Certain revocable trusts treated as part of estate."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 11602. DISTRIBUTIONS DURING FIRST 65 DAYS OF TAXABLE YEAR OF ESTATE.

(a) IN GENERAL.—Subsection (b) of section 663 (relating to distributions in first 65 days of taxable year) is amended by inserting "an estate or" before "a trust" each place it appears.

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 663(b) is amended by striking "the fiduciary of such trust" and inserting "the executor of such estate or the fiduciary of such trust (as the case may be)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 11603. SEPARATE SHARE RULES AVAILABLE TO ESTATES.

(a) IN GENERAL.—Subsection (c) of section 663 (relating to separate shares treated as separate trusts) is amended—

(1) by inserting before the last sentence the following new sentence: "Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates.", and

(2) by inserting "or estates" after "trusts" in the last sentence.

(b) CONFORMING AMENDMENT.—The subsection heading of section 663(c) is amended by inserting "ESTATES OR" before "TRUSTS".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 11604. EXECUTOR OF ESTATE AND BENEFICIARIES TREATED AS RELATED PERSONS FOR DISALLOWANCE OF LOSSES, ETC.

(a) DISALLOWANCE OF LOSSES.—Subsection (b) of section 267 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) is amended by striking "or" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting "; or", and by adding at the end the following new paragraph:

"(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate."

(b) ORDINARY INCOME FROM GAIN FROM SALE OF DEPRECIABLE PROPERTY.—Subsection (b) of section 1239 is amended by striking

the period at the end of paragraph (2) and inserting ", and" and by adding at the end the following new paragraph:

"(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 11605. LIMITATION ON TAXABLE YEAR OF ESTATES.

(a) IN GENERAL.—Section 645 (relating to taxable year of trusts) is amended to read as follows:

"SEC. 645. TAXABLE YEAR OF ESTATES AND TRUSTS.

"(a) ESTATES.—For purposes of this subtitle, the taxable year of an estate shall be a year ending on October 31, November 30, or December 31.

"(b) TRUSTS.—

"(1) IN GENERAL.—For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

"(2) EXCEPTION FOR TRUSTS EXEMPT FROM TAX AND CHARITABLE TRUSTS.—Paragraph (1) shall not apply to a trust exempt from taxation under section 501(a) or to a trust described in section 4947(a)(1)."

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part I of subchapter J of chapter 1 is amended by striking the item relating to section 645 and inserting the following new item:

"Sec. 645. Taxable year of estates and trusts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 11606. TREATMENT OF FUNERAL TRUSTS.

(a) IN GENERAL.—Subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new section:

"SEC. 684. TREATMENT OF FUNERAL TRUSTS.

"(a) IN GENERAL.—In the case of a qualified funeral trust—

"(1) subparts B, C, D, and E shall not apply, and

"(2) no deduction shall be allowed by section 642(b).

"(b) QUALIFIED FUNERAL TRUST.—For purposes of this subsection, the term 'qualified funeral trust' means any trust (other than a foreign trust) if—

"(1) the trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide such services,

"(2) the sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use such funds solely to make payments for such services or property for the benefit of the beneficiaries of the trust,

"(3) the only beneficiaries of such trust are individuals who have entered into contracts described in paragraph (1) to have such services or property provided at their death,

"(4) the only contributions to the trust are contributions by or for the benefit of such beneficiaries,

"(5) the trustee elects the application of this subsection, and

"(6) the trust would (but for the election described in paragraph (5)) be treated as owned by the beneficiaries under subpart E.

"(c) DOLLAR LIMITATION ON CONTRIBUTIONS.—

"(1) IN GENERAL.—The term 'qualified funeral trust' shall not include any trust which accepts aggregate contributions by or for the benefit of an individual in excess of $7,000.

"(2) RELATED TRUSTS.—For purposes of paragraph (1), all trusts having trustees which are related persons shall be treated as 1 trust. For purposes of the preceding sentence, persons are related if—

"(A) the relationship between such persons would result in the disallowance of losses under section 267 or 707(b),

"(B) such persons are treated as a single employer under subsection (a) or (b) of section 52, or

"(C) the Secretary determines that treating such persons as related is necessary to prevent avoidance of the purposes of this section.

"(3) INFLATION ADJUSTMENT.—In the case of any contract referred to in subsection (b)(1) which is entered into during any calendar year after 1996, the dollar amount referred to paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

If any dollar amount after being increased under the preceding sentence is not a multiple of $100, such dollar amount shall be rounded to the nearest multiple of $100.

"(d) APPLICATION OF RATE SCHEDULE.—Section 1(e) shall be applied to each qualified funeral trust by treating each beneficiary's interest in each such trust as a separate trust.

"(e) TREATMENT OF AMOUNTS REFUNDED TO BENEFICIARY ON CANCELLATION.—No gain or loss shall be recognized to a beneficiary described in subsection (b)(3) of any qualified funeral trust by reason of any payment from such trust to such beneficiary by reason of cancellation of a contract referred to in subsection (b)(1). If any payment referred to in the preceding sentence consists of property other than money, the basis of such property in the hands of such beneficiary shall be the same as the trust's basis in such property immediately before the payment.

"(f) SIMPLIFIED REPORTING.—The Secretary may prescribe rules for simplified reporting of all trusts having a single trustee."

(b) CLERICAL AMENDMENT.—The table of sections for subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new item:

"Sec. 684. Treatment of funeral trusts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Subchapter B—Estate and Gift Tax Provisions

SEC. 11611. CLARIFICATION OF WAIVER OF CERTAIN RIGHTS OF RECOVERY.

(a) AMENDMENT TO SECTION 2207A.—Paragraph (2) of section 2207A(a) (relating to right of recovery in the case of certain marital deduction property) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(b) AMENDMENT TO SECTION 2207B.—Paragraph (2) of section 2207B(a) (relating to right of recovery where decedent retained interest) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the estates of decedents dying after the date of the enactment of this Act.

SEC. 11612. ADJUSTMENTS FOR GIFTS WITHIN 3 YEARS OF DECEDENT'S DEATH.

(a) GENERAL RULE.—Section 2035 is amended to read as follows:

"SEC. 2035. ADJUSTMENTS FOR CERTAIN GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.

"(a) INCLUSION OF CERTAIN PROPERTY IN GROSS ESTATE.—If—

"(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

"(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

"(b) INCLUSION OF GIFT TAX ON GIFTS MADE DURING 3 YEARS BEFORE DECEDENT'S DEATH.—The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

"(c) OTHER RULES RELATING TO TRANSFERS WITHIN 3 YEARS OF DEATH.—

"(1) IN GENERAL.—For purposes of—

"(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

"(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

"(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

"(2) COORDINATION WITH SECTION 6166.—An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of paragraph (1).

"(3) MARITAL AND SMALL TRANSFERS.—Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

"(d) EXCEPTION.—Subsection (a) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

"(e) TREATMENT OF CERTAIN TRANSFERS FROM REVOCABLE TRUSTS.—For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) shall be treated as a transfer made directly by the decedent."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by striking "gifts" in the item relating to section 2035 and inserting "certain gifts".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 11613. CLARIFICATION OF QUALIFIED TERMINABLE INTEREST RULES.

(a) GENERAL RULE.—

(1) ESTATE TAX.—Subparagraph (B) of section 2056(b)(7) (defining qualified terminable interest property) is amended by adding at the end the following new clause:

"(vi) TREATMENT OF CERTAIN INCOME DISTRIBUTIONS.—An income interest shall not fail to qualify as a qualified income interest for life solely because income for the period after the last distribution date and on or before the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse."

(2) GIFT TAX.—Paragraph (3) of section 2523(f) is amended by striking "and (iv)" and inserting "(iv), and (vi)".

(b) CLARIFICATION OF SUBSEQUENT INCLUSIONS.—Section 2044 is amended by adding at the end the following new subsection:

"(d) CLARIFICATION OF INCLUSION OF CERTAIN INCOME.—The amount included in the gross estate under subsection (a) shall include the amount of any income from the property to which this section applies for the period after the last distribution date and on or

before the date of the decedent's death if such income is not otherwise included in the decedent's gross estate."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to the estates of decedents dying, and gifts made, after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 2044 TO TRANSFERS BEFORE DATE OF ENACTMENT.—In the case of the estate of any decedent dying after the date of the enactment of this Act, if there was a transfer of property on or before such date—

(A) such property shall not be included in the gross estate of the decedent under section 2044 of the Internal Revenue Code of 1986 if no prior marital deduction was allowed with respect to such a transfer of such property to the decedent, but

(B) such property shall be so included if such a deduction was allowed.

SEC. 11614. TRANSITIONAL RULE UNDER SECTION 2056A.

(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990, such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990.

SEC. 11615. OPPORTUNITY TO CORRECT CERTAIN FAILURES UNDER SECTION 2032A.

(a) GENERAL RULE.—Paragraph (3) of section 2032A(d) (relating to modification of election and agreement to be permitted) is amended to read as follows:

"(3) MODIFICATION OF ELECTION AND AGREEMENT TO BE PERMITTED.—The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

"(A) the notice of election, as filed, does not contain all required information, or

"(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 11616. GIFTS MAY NOT BE REVALUED FOR ESTATE TAX PURPOSES AFTER EXPIRATION OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 2001 (relating to imposition and rate of estate tax) is amended by adding at the end the following new subsection:

"(f) VALUATION OF GIFTS.—If—

"(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and

"(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12."

(b) MODIFICATION OF APPLICATION OF STATUTE OF LIMITATIONS.—Paragraph (9) of section 6501(c) is amended to read as follows:

"(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item. The value of any item which is so disclosed may not be redetermined by the Secretary after the expiration of the period under subsection (a)."

(c) DECLARATORY JUDGMENT PROCEDURE FOR DETERMINING VALUE OF GIFT.—

(1) IN GENERAL.—Part IV of subchapter C of chapter 76 is amended by inserting after section 7476 the following new section:

"SEC. 7477. DECLARATORY JUDGMENTS RELATING TO VALUE OF CERTAIN GIFTS.

"(a) CREATION OF REMEDY.—In a case of an actual controversy involving a determination by the Secretary of the value of any gift shown on the return of tax imposed by chapter 12 or disclosed on such return or in any statement attached to such return, upon the filing of an appropriate pleading, the Tax Court may make a declaration of the value of such gift. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by the donor.

"(2) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner

has exhausted all available administrative remedies within the Internal Revenue Service.

"(3) TIME FOR BRINGING ACTION.—If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing."

(2) CLERICAL AMENDMENT.—The table of sections for such part IV is amended by inserting after the item relating to section 7476 the following new item:

"Sec. 7477. Declaratory judgments relating to value of certain gifts."

(d) CONFORMING AMENDMENT.—Subsection (c) of section 2504 is amended by striking ", and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to gifts made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to gifts made in calendar years ending after the date of the enactment of this Act.

SEC. 11617. CLARIFICATIONS RELATING TO DISCLAIMERS.

(a) PARTIAL TRANSFER-TYPE DISCLAIMERS PERMITTED.—Paragraph (3) of section 2518(c) (relating to certain transfers treated as disclaimers) is amended by inserting "(or an undivided portion of such interest)" after "entire interest in the property".

(b) RETENTION OF INTEREST BY DECEDENT'S SPOUSE PERMITTED IN TRANSFER-TYPE DISCLAIMERS.—Paragraph (3) of section 2518(c) is amended by adding at the end the following new flush sentence:

"For purposes of the preceding sentence, a written transfer by the spouse of the decedent of property to a trust shall not fail to be treated as a transfer of such spouse's interest in such property by reason of such spouse having an interest in such trust."

(c) DISCLAIMERS ARE EFFECTIVE FOR INCOME TAX PURPOSES.—Subsection (a) of section 2518 is amended by inserting "and subtitle A" after "this subtitle" each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers creating an interest in the person disclaiming, and disclaimers, made after the date of the enactment of this Act.

SEC. 11618. CLARIFICATION OF TREATMENT OF SURVIVOR ANNUITIES UNDER QUALIFIED TERMINABLE INTEREST RULES.

(a) IN GENERAL.—Subparagraph (C) of section 2056(b)(7) is amended by inserting "(or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033)" after "section 2039".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 11619. TREATMENT UNDER QUALIFIED DOMESTIC TRUST RULES OF FORMS OF OWNERSHIP WHICH ARE NOT TRUSTS.

(a) IN GENERAL.—Subsection (c) of section 2056A (defining qualified domestic trust) is amended by adding at the end the following new paragraph:

“(3) TRUST.—To the extent provided in regulations prescribed by the Secretary, the term ‘trust’ includes other arrangements which have substantially the same effect as a trust.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

Subchapter C—Generation-Skipping Tax Provisions

SEC. 11631. TAXABLE TERMINATION NOT TO INCLUDE DIRECT SKIPS.

(a) IN GENERAL.—Paragraph (1) of section 2612(a) (defining taxable termination) is amended by adding at the end the following new flush sentence:

“Such term shall not include a direct skip.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to generation-skipping transfers (as defined in section 2611 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

CHAPTER 7—EXCISE TAX SIMPLIFICATION

Subchapter A—Provisions Related to Distilled Spirits, Wines, and Beer

SEC. 11641. CREDIT OR REFUND FOR IMPORTED BOTTLED DISTILLED SPIRITS RETURNED TO DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (1) of section 5008(c) (relating to distilled spirits returned to bonded premises) is amended by striking “withdrawn from bonded premises on payment or determination of tax” and inserting “on which tax has been determined or paid”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 11642. FERMENTED MATERIAL FROM ANY BREWERY MAY BE RECEIVED AT A DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (2) of section 5222(b) (relating to production, receipt, removal, and use of distilling materials) is amended to read as follows:

“(2) beer conveyed without payment of tax from brewery premises, beer which has been lawfully removed from brewery premises upon determination of tax, or”.

(b) CLARIFICATION OF AUTHORITY TO PERMIT REMOVAL OF BEER WITHOUT PAYMENT OF TAX FOR USE AS DISTILLING MATERIAL.—Section 5053 (relating to exemptions) is amended by redesignating subsection (f) as subsection (i) and by inserting after subsection (e) the following new subsection:

“(f) REMOVAL FOR USE AS DISTILLING MATERIAL.—Subject to such regulations as the Secretary may prescribe, beer may be removed from a brewery without payment of tax to any distilled spirits plant for use as distilling material.”

(c) CLARIFICATION OF REFUND AND CREDIT OF TAX.—Section 5056 (relating to refund and credit of tax, or relief from liability) is amended—

(1) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) BEER RECEIVED AT A DISTILLED SPIRITS PLANT.—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is received on the bonded premises of a distilled spirits plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.", and

(2) by striking "or rendering unmerchantable" in subsection (d) (as so redesignated) and inserting "rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 11643. REFUND OF TAX ON WINE RETURNED TO BOND NOT LIMITED TO UNMERCHANTABLE WINE.

(a) IN GENERAL.—Subsection (a) of section 5044 (relating to refund of tax on unmerchantable wine) is amended by striking "as unmerchantable".

(b) CONFORMING AMENDMENTS.—

(1) Section 5361 is amended by striking "unmerchantable".

*(2) The section heading for section 5044 is amended by striking "**UNMERCHANTABLE**".*

(3) The item relating to section 5044 in the table of sections for subpart C of part I of subchapter A of chapter 51 is amended by striking "unmerchantable".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 11644. BEER MAY BE WITHDRAWN FREE OF TAX FOR DESTRUCTION.

(a) IN GENERAL.—Section 5053 is amended by inserting after subsection (g) the following new subsection:

"(h) REMOVALS FOR DESTRUCTION.—Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

SEC. 11645. TRANSFER TO BREWERY OF BEER IMPORTED IN BULK WITHOUT PAYMENT OF TAX.

(a) IN GENERAL.—Part II of subchapter G of chapter 51 is amended by adding at the end the following new section:

"SEC. 5418. BEER IMPORTED IN BULK.

"Beer imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk

containers to the premises of a brewery without payment of the internal revenue tax imposed on such beer. The proprietor of a brewery to which such beer is transferred shall become liable for the tax on the beer withdrawn from customs custody under this section upon release of the beer from customs custody, and the importer, or the person bringing such beer into the United States, shall thereupon be relieved of the liability for such tax.''

(b) CLERICAL AMENDMENT.—The table of sections for such part II is amended by adding at the end the following new item:

''Sec. 5418. Beer imported in bulk.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect at the beginning of the first calendar quarter beginning more than 180 days after the date of the enactment of this Act.

Subchapter B—Consolidation of Taxes on Aviation Gasoline

SEC. 11651. CONSOLIDATION OF TAXES ON AVIATION GASOLINE.

(a) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) (relating to imposition of tax on gasoline and diesel fuel) is amended by redesignating clause (ii) as clause (iii) and by striking clause (i) and inserting the following:

''(i) in the case of gasoline other than aviation gasoline, 18.3 cents per gallon,

''(ii) in the case of aviation gasoline, 19.3 cents per gallon, and''.

(b) TERMINATION.—Subsection (d) of section 4081 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

''(2) AVIATION GASOLINE.—On and after January 1, 1996, the rate specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon.''

(c) REPEAL OF RETAIL LEVEL TAX.—

(1) Subsection (c) of section 4041 is amended by striking paragraphs (2) and (3) and by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively.

(2) Paragraph (3) of section 4041(c), as redesignated by paragraph (1), is amended by striking ''paragraphs (1) and (2)'' and inserting ''paragraph (1)''.

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 4041(k) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) Paragraph (1) of section 4081(d) is amended by striking ''each rate of tax specified in subsection (a)(2)(A)'' and inserting ''the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A)''.

(3) Sections 6421(f)(2)(A) and 9502(f)(1)(A) are each amended by striking ''section 4041(c)(4)'' and inserting ''section 4041(c)(2)''.

(4) Paragraph (2) of section 9502(b) is amended by striking ''14 cents'' and inserting ''15 cents''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

(f) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—In the case of aviation gasoline on which tax was imposed under section 4081 of the Internal Revenue Code of 1986 before January 1, 1996, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 1 cent per gallon of such gasoline.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding aviation gasoline on January 1, 1996, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before June 30, 1996.

(3) DEFINITIONS.—For purposes of this subsection:

(A) HELD BY A PERSON.—Gasoline shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 of such Code is allowable for such use.

(5) EXCEPTION FOR FUEL HELD IN AIRCRAFT TANK.—No tax shall be imposed by paragraph (1) on aviation gasoline held in the tank of an aircraft.

(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on aviation gasoline held on January 1, 1996, by any person if the aggregate amount of aviation gasoline held by such person on such date does not exceed 6,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

(C) CONTROLLED GROUPS.—

(i) CORPORATIONS.—In the case of a controlled group, the 6,000 gallon amount in subparagraph (A) shall be apportioned among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group under common control where 1 or more of the members is not a corporation.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081.

Subchapter C—Other Excise Tax Provisions

SEC. 11661. CERTAIN COMBINATIONS NOT TREATED AS MANUFACTURE UNDER RETAIL SALES TAX ON HEAVY TRUCKS.

(a) IN GENERAL.—Paragraph (2) of section 4052(c) (relating to certain combinations not treated as manufacture) is amended by striking "or wood or metal floor" and inserting "wood or metal floor, or a power take-off and dump body".

(b) REMOVAL OF FIFTH WHEEL.—Paragraph (1) of section 4052(c) is amended by inserting before the period "or the removal of any coupling device (including any fifth wheel)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

CHAPTER 8—ADMINISTRATIVE PROVISION

SEC. 11671. CERTAIN NOTICES DISREGARDED UNDER PROVISION INCREASING INTEREST RATE ON LARGE CORPORATE UNDERPAYMENTS.

(a) GENERAL RULE.—Subparagraph (B) of section 6621(c)(2) (defining applicable date) is amended by adding at the end the following new clause:

"(iii) EXCEPTION FOR LETTERS OR NOTICES INVOLVING SMALL AMOUNTS.—For purposes of this paragraph, any letter or notice shall be disregarded if the amount of the deficiency or proposed deficiency (or the assessment or proposed assessment) set forth in such letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining interest for periods after December 31, 1995.

Subtitle K—Miscellaneous Provisions

SEC. 11701. TREATMENT OF STORAGE OF PRODUCT SAMPLES.

(a) IN GENERAL.—Paragraph (2) of section 280A(c) is amended by striking "inventory" and inserting "inventory or product samples".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

SEC. 11702. ADJUSTMENT OF DEATH BENEFIT LIMITS FOR CERTAIN POLICIES.

(a) IN GENERAL.—Subparagraph (C)(i) of section 7702(e)(2) (relating to limited increases in death benefit permitted) is amended by striking "$5,000" and inserting "$7,000" and by striking "$25,000" and inserting "$30,000".

(b) INFLATION ADJUSTMENTS.—Section 7702(e) (relating to computational rules) is amended by adding at the end the following new paragraph:

"(3) INFLATION ADJUSTMENT TO DEATH BENEFIT LIMITS FOR YEARS AFTER 1996.—In the case of any taxable year beginning in a calendar year after 1996, each dollar amount contained in paragraph (2)(C)(i) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.".

(c) CONFORMING AMENDMENT.—Section 72(e)(10)(B) is amended by striking "$25,000" and inserting "$30,000 (adjusted at the same time and in the same manner as under section 7702(e)(3))".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts entered into after December 31, 1995.

SEC. 11703. ORGANIZATIONS SUBJECT TO SECTION 833.

(a) IN GENERAL.—Section 833(c) (relating to organization to which section applies) is amended by adding at the end the following new paragraph:

"(4) TREATMENT AS EXISTING BLUE CROSS OR BLUE SHIELD ORGANIZATION.—

"(A) IN GENERAL.—Paragraph (2) shall be applied to an organization described in subparagraph (B) as if it were a Blue Cross or Blue Shield organization.

"(B) APPLICABLE ORGANIZATION.—An organization is described in this subparagraph if it—

"(i) is organized under, and governed by, State laws which are specifically and exclusively applicable to not-for-profit health insurance or health service type organizations, and

"(ii) is not a Blue Cross or Blue Shield organization or health maintenance organization.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after October 13, 1995.

SEC. 11704. CORRECTION OF INFLATION ADJUSTMENT IN LUXURY EXCISE TAX ON AUTOMOBILES.

(a) IN GENERAL.—Subsection (e) of section 4001 (relating to inflation adjustment) is amended to read as follows:

"(e) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—The $30,000 amount in subsection (a) and section 4003(a) shall be increased by an amount equal to—

"(A) $30,000, multiplied by

"(B) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the vehicle is sold, determined by substituting 'calendar year 1990' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $2,000, such amount shall be rounded to the next lowest multiple of $2,000."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 11705. EXTENSION AND PHASEDOWN OF LUXURY PASSENGER AUTOMOBILE TAX.

(a) EXTENSION.—Subsection (f) of section 4001 is amended by striking "1999" and inserting "2002".

(b) PHASEDOWN.—Section 4001 is amended by redesignating subsection (f) (as amended by subsection (a) of this section) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) PHASEDOWN.—For sales occurring in a calendar year after 1995 and before 2003, subsection (a) shall be applied by substituting for '10 percent' the percentage determined in accordance with the following table:

"If the calendar year is:	The percentage is:
1996	9 percent
1997	8 percent
1998	7 percent
1999	6 percent
2000	5 percent
2001	4 percent
2002	3 percent."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

Subtitle L—Generalized System of Preferences

SEC. 11801. SHORT TITLE.

This subtitle may be cited as the "GSP Renewal Act of 1995".

SEC. 11802. GENERALIZED SYSTEM OF PREFERENCES.

(a) IN GENERAL.—Title V of the Trade Act of 1974 is amended to read as follows:

"TITLE V—GENERALIZED SYSTEM OF PREFERENCES

"SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

"The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

"(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

"(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

"(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

"(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

"SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES.

"(a) AUTHORITY TO DESIGNATE COUNTRIES.—

"(1) BENEFICIARY DEVELOPING COUNTRIES.—The President is authorized to designate countries as beneficiary developing countries for purposes of this title.

"(2) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this title, based on the considerations in section 501 and subsection (c) of this section.

"(b) COUNTRIES INELIGIBLE FOR DESIGNATION.—

"(1) SPECIFIC COUNTRIES.—The following countries may not be designated as beneficiary developing countries for purposes of this title:

"(A) Australia.

"(B) Canada.

"(C) European Union member states.

"(D) Iceland.

"(E) Japan.

"(F) Monaco.

"(G) New Zealand.

"(H) Norway.

"(I) Switzerland.

"(2) OTHER BASES FOR INELIGIBILITY.—The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

"(A) Such country is a Communist country, unless—

"(i) the products of such country receive nondiscriminatory treatment,

"(ii) such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and

"(iii) such country is not dominated or controlled by international communism.

"(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

"(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

"(ii) to cause serious disruption of the world economy.

"(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

"(D)(i) Such country—

"(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including pat-

ents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

“(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

“(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless clause (ii) applies.

“(ii) This clause applies if the President determines that—

“(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

“(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

“(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum,

and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

“(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

“(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.

“(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Subparagraphs (D), (E), (F), and (G) shall not prevent the designation of any country as a beneficiary developing country under this title if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

"(c) FACTORS AFFECTING COUNTRY DESIGNATION.—In determining whether to designate any country as a beneficiary developing country under this title, the President shall take into account—

"(1) an expression by such country of its desire to be so designated;

"(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

"(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

"(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

"(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

"(6) the extent to which such country has taken action to—

"(A) reduce trade distorting investment practices and policies (including export performance requirements); and

"(B) reduce or eliminate barriers to trade in services; and

"(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

"(d) WITHDRAWAL, SUSPENSION, OR LIMITATION OF COUNTRY DESIGNATION.—

"(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 501 and subsection (c) of this section.

"(2) CHANGED CIRCUMSTANCES.—The President shall, after complying with the requirements of subsection (f)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this title.

"(3) ADVICE TO CONGRESS.—The President shall, as necessary, advise the Congress on the application of section 501

and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c).

"(e) MANDATORY GRADUATION OF BENEFICIARY DEVELOPING COUNTRIES.—If the President determines that a beneficiary developing country has become a 'high income' country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this title, effective on January 1 of the second year following the year in which such determination is made.

"(f) CONGRESSIONAL NOTIFICATION.—

"(1) NOTIFICATION OF DESIGNATION.—

"(A) IN GENERAL.—Before the President designates any country as a beneficiary developing country under this title, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

"(B) DESIGNATION AS LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

"(2) NOTIFICATION OF TERMINATION.—If the President has designated any country as a beneficiary developing country under this title, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

"SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.

"(a) ELIGIBLE ARTICLES.—

"(1) DESIGNATION.—

"(A) IN GENERAL.—Except as provided in subsection (b), the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this title by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e).

"(B) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) and articles described in paragraphs (2) and (3) of subsection (b), the President may, in carrying out section 502(d)(1) and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

"(C) THREE-YEAR RULE.—If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for designation as an eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

"(2) RULE OF ORIGIN.—

"(A) GENERAL RULE.—The duty-free treatment provided under this title shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

"(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

"(ii) the sum of—

"(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 507(2), plus

"(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries,

is not less than 35 percent of the appraised value of such article at the time it is entered.

"(B) EXCLUSIONS.—An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

"(i) simple combining or packaging operations, or

"(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

"(3) REGULATIONS.—The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article—

"(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

"(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

"(b) ARTICLES THAT MAY NOT BE DESIGNATED AS ELIGIBLE ARTICLES.—

"(1) IMPORT SENSITIVE ARTICLES.—The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles:

"(A) Textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on such date.

"(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after

public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.

"(C) Import-sensitive electronic articles.

"(D) Import-sensitive steel articles.

"(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on January 1, 1995, as this title was in effect on such date.

"(F) Import-sensitive semimanufactured and manufactured glass products.

"(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

"(2) ARTICLES AGAINST WHICH OTHER ACTIONS TAKEN.—An article shall not be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act (19 U.S.C. 2253) or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, 1981).

"(3) AGRICULTURAL PRODUCTS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

"(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITATION.—

"(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

"(2) COMPETITIVE NEED LIMITATION.—

"(A) BASIS FOR WITHDRAWAL OF DUTY-FREE TREATMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii) and subject to subsection (d), whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995—

"(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

"(II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year,

the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

"(ii) ANNUAL ADJUSTMENT OF APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

"(I) for 1996, $75,000,000, and

"(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $5,000,000.

"(B) COUNTRY DEFINED.—For purposes of this paragraph, the term 'country' does not include an association of countries which is treated as one country under section 507(2), but does include a country which is a member of any such association.

"(C) REDESIGNATIONS.—A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 501 and 502, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

"(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Subparagraph (A) shall not apply to any least-developed beneficiary developing country.

"(E) ARTICLES NOT PRODUCED IN THE UNITED STATES EXCLUDED.—Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

"(F) DE MINIMIS WAIVERS.—

"(i) IN GENERAL.—The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

"(ii) APPLICABLE AMOUNT.—For purposes applying clause (i), the applicable amount is—

"(I) for calendar year 1995, $13,000,000, and

"(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $500,000.

"(d) WAIVER OF COMPETITIVE NEED LIMITATION.—

"(1) IN GENERAL.—The President may waive the application of subsection (c)(2) with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) was made with respect to such eligible article, the President—

"(A) receives the advice of the International Trade Commission under section 332 of the Tariff Act of 1930 on whether any industry in the United States is likely to be adversely affected by such waiver,

"(B) determines, based on the considerations described in sections 501 and 502(c) and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

"(C) publishes the determination described in subparagraph (B) in the Federal Register.

"(2) CONSIDERATIONS BY THE PRESIDENT.—In making any determination under paragraph (1), the President shall give great weight to—

"(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

"(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

"(3) OTHER BASES FOR WAIVER.—The President may waive the application of subsection (c)(2) if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) was made with respect to a beneficiary developing country, the President determines that—

"(A) there has been a historical preferential trade relationship between the United States and such country,

"(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

"(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

and the President publishes that determination in the Federal Register.

"(4) LIMITATIONS ON WAIVERS.—

"(A) IN GENERAL.—The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this title during the preceding calendar year.

"(B) OTHER WAIVER LIMITS.—The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

"(i) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of $5,000 or more; or

"(ii) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-

free under this title that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this title during that year.

"(C) CALCULATION OF LIMITATIONS.—There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that—

"(i) entered duty-free under this title during such calendar year; and

"(ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) applied.

"(5) EFFECTIVE PERIOD OF WAIVER.—Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

"(e) INTERNATIONAL TRADE COMMISSION ADVICE.—Before designating articles as eligible articles under subsection (a)(1), the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. The provisions of sections 131, 132, 133, and 134 shall be complied with as though action under section 501 and this section were action under section 123 to carry out a trade agreement entered into under section 123.

"(f) SPECIAL RULE CONCERNING PUERTO RICO.—No action under this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 on coffee imported into Puerto Rico.

"SEC. 504. REVIEW AND REPORTS TO CONGRESS.

"The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

"SEC. 505. DATE OF TERMINATION.

"No duty-free treatment provided under this title shall remain in effect after December 31, 1996.

"SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

"The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

"SEC. 507. DEFINITIONS.

"For purposes of this title:

"(1) BENEFICIARY DEVELOPING COUNTRY.—The term 'beneficiary developing country' means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this title.

"(2) COUNTRY.—The term 'country' means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pa-

cific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 502(b) shall be treated as one country for purposes of this title.

"(3) ENTERED.—The term 'entered' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

"(4) INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The term 'internationally recognized worker rights' includes—

"(A) the right of association;

"(B) the right to organize and bargain collectively;

"(C) a prohibition on the use of any form of forced or compulsory labor;

"(D) a minimum age for the employment of children; and

"(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

"(5) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—The term 'least-developed beneficiary developing country' means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 502(a)(2).".

(b) TABLE OF CONTENTS.—The items relating to title V in the table of contents of the Trade Act of 1974 are amended to read as follows:

"TITLE V—GENERALIZED SYSTEM OF PREFERENCES

SEC. 11803. RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law and subject to subsection (b), the entry—

(1) of any article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on July 31, 1995, and

(2) that was made after July 31, 1995, and before the date of the enactment of this Act,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry. As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

(b) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry only if a request there-

for is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(1) to locate the entry; or

(2) to reconstruct the entry if it cannot be located.

SEC. 11804. CONFORMING AMENDMENTS.

(a) TRADE LAWS.—

(1) Section 1211(b) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3011(b)) is amended—

(A) in paragraph (1), by striking "(19 U.S.C. 2463(a), 2464(c)(3))" and inserting "(as in effect on July 31, 1995)"; and

(B) in paragraph (2), by striking "(19 U.S.C. 2464(c)(1))" and inserting the following: "(as in effect on July 31, 1995)".

(2) Section 203(c)(7) of the Andean Trade Preference Act (19 U.S.C. 3202(c)(7)) is amended by striking "502(a)(4)" and inserting "507(4)".

(3) Section 212(b)(7) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)(7)) is amended by striking "502(a)(4)" and inserting "507(4)".

(4) General note 3(a)(iv)(C) of the Harmonized Tariff Schedule of the United States is amended by striking "sections 503(b) and 504(c)" and inserting "subsections (a), (c), and (d) of section 503".

(5) Section 201(a)(2) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3331(a)(2)) is amended by striking "502(a)(2) of the Trade Act of 1974 (19 U.S.C. 2462(a)(2))" and inserting "502(f)(2) of the Trade Act of 1974".

(6) Section 131 of the Uruguay Round Agreements Act (19 U.S.C. 3551) is amended in subsections (a) and (b)(1) by striking "502(a)(4)" and inserting "507(4)".

(b) OTHER LAWS.—

(1) Section 871(f)(2)(B) of the Internal Revenue Code of 1986 is amended by striking "within the meaning of section 502" and inserting "under title V".

(2) Section 2202(8) of the Export Enhancement Act of 1988 (15 U.S.C. 4711(8)) is amended by striking "502(a)(4)" and inserting "507(4)".

(3) Section 231A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191a(a)) is amended—

(A) in paragraph (1) by striking "502(a)(4) of the Trade Act of 1974 (19 U.S.C. 2462(a)(4))" and inserting "507(4) of the Trade Act of 1974";

(B) in paragraph (2) by striking "505(c) of the Trade Act of 1974 (19 U.S.C. 2465(c))" and inserting "504 of the Trade Act of 1974"; and

(C) in paragraph (4) by striking "502(a)(4)" and inserting "507(4)".

(4) Section 1621(a)(1) of the International Financial Institutions Act (22 U.S.C. 262p–4p(a)(1)) is amended by striking "502(a)(4)" and inserting "507(4)".

(5) Section 103B of the Agricultural Act of 1949 (7 U.S.C. 1444–2) is amended in subsections (a)(5)(F)(v) and (n)(1)(C) by

striking "503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d))" and inserting "503(b)(3) of the Trade Act of 1974".

Subtitle M—Increase in Public Debt LImit

SEC. 11901. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar amount contained in the first sentence and inserting "$5,500,000,000,000" and by striking the second sentence (if any).

TITLE XII—TEACHING HOSPITALS AND GRADUATE MEDICAL EDUCATION; ASSET SALES; WELFARE; AND OTHER PROVISIONS

SEC. 12001. SHORT TITLE.

Subtitles A through K of this title may be cited as the "Personal Responsibility and Work Opportunity Act of 1995".

SEC. 12002. TABLE OF CONTENTS.

The table of contents of subtitles A through L of this title is as follows:

Subtitle A—Block Grants for Temporary Assistance for Needy Families

SEC. 12100. REFERENCES TO THE SOCIAL SECURITY ACT.

Except as otherwise specifically provided, wherever in this subtitle 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 Social Security Act.

SEC. 12101. BLOCK GRANTS TO STATES.

Part A of title IV (42 U.S.C. 601 et seq.) is amended to read as follows:

“PART A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

“SEC. 401. ELIGIBLE STATES; STATE PLAN.

“(a) IN GENERAL.—As used in this part, the term ‘eligible State’ means, with respect to a fiscal year, a State that, during the 2-year period immediately preceding the fiscal year, has submitted to the Secretary a plan that includes the following:

“(1) OUTLINE OF FAMILY ASSISTANCE PROGRAM.—

“(A) GENERAL PROVISIONS.—A written document that outlines how the State intends to do the following:

“(i) Conduct a program, designed to serve all political subdivisions in the State, that provides assistance to needy families with (or expecting) children and pro-

vides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

"(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier.

"(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 406.

"(iv) Take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program.

"(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State (as defined in section 402(a)(2)(B)) for calendar years 1996 through 2005.

"(B) SPECIAL PROVISIONS.—

"(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

"(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

"(2) CERTIFICATION THAT THE STATE WILL OPERATE A CHILD SUPPORT ENFORCEMENT PROGRAM.—A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D.

"(3) CERTIFICATION THAT THE STATE WILL OPERATE A CHILD PROTECTION PROGRAM.—A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child protection program under the State plan approved under part B.

"(4) CERTIFICATION OF THE ADMINISTRATION OF THE PROGRAM.—A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local governments and private sector organizations—

"(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

"(B) have had at least 60 days to submit comments on the plan and the design of such services.

"(5) CERTIFICATION THAT THE STATE WILL PROVIDE INDIANS WITH EQUITABLE ACCESS TO ASSISTANCE.—A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each Indian who is a member of an Indian tribe in the State that does not have a tribal family assistance plan approved under section 411 with equitable access to assistance under the State program funded under this part.

"(b) SPECIAL RULE FOR FISCAL YEAR 1996.—Notwithstanding subsection (a), the term 'eligible State' means, with respect to fiscal year 1996, a State that has submitted to the Secretary a plan described in subsection (a) within 3 months after the date of the enactment of this part.

"(c) PUBLIC AVAILABILITY OF STATE PLAN SUMMARY.—The State shall make available to the public a summary of any plan submitted by the State under this section.

"SEC. 402. PAYMENTS TO STATES.

"(a) GRANTS.—

"(1) FAMILY ASSISTANCE GRANT.—

"(A) IN GENERAL.—Each eligible State shall be entitled to receive from the Secretary, for each of fiscal years 1996, 1997, 1998, 1999, and 2000, a grant in an amount equal to the State family assistance grant. The payment of these grants to States shall not be deemed to entitle any individual or family to any assistance under any State program funded under this part.

"(B) STATE FAMILY ASSISTANCE GRANT DEFINED.—As used in this part, the term 'State family assistance grant' means the greatest of—

"(i) ⅓ of the total amount required to be paid to the State under section 403 of this title (as in effect on September 30, 1995) for fiscal years 1992, 1993, and 1994 (other than with respect to amounts expended by the State for child care under subsection (g) or (i) of section 402 (as so in effect));

"(ii) the total amount required to be paid to the State under such section 403 for fiscal year 1994 (other than with respect to amounts expended by the State for child care under subsection (g) or (i) of section 402 (as so in effect)); or

"(iii) ⁴⁄₃ of the total amount required to be paid to the State under such section 403 for the 1st 3 quarters of fiscal year 1995 (other than with respect to amounts expended by the State under the State plan approved under part F (as so in effect) or for child care under subsection (g) or (i) of section 402 (as so in effect)), plus the total amount required to be paid to the State for fiscal year 1995 under section 403(l) (as so in effect).

"(2) GRANT TO REWARD STATES THAT REDUCE OUT-OF-WEDLOCK BIRTHS.—

"(A) IN GENERAL.—In addition to any grant under paragraph (1), each eligible State shall be entitled to receive from the Secretary for fiscal year 1998 or any succeeding fiscal year, a grant in an amount equal to the State family assistance grant multiplied by—

"(i) 5 percent if—

"(I) the illegitimacy ratio of the State for the fiscal year is at least 1 percentage point lower than the illegitimacy ratio of the State for fiscal year 1995; and

"(II) the rate of induced pregnancy terminations in the State for the fiscal year is less than the rate of induced pregnancy terminations in the State for fiscal year 1995; or

"(ii) 10 percent—

"(I) if the illegitimacy ratio of the State for the fiscal year is at least 2 percentage points lower than the illegitimacy ratio of the State for fiscal year 1995; and

"(II) the rate of induced pregnancy terminations in the State for the fiscal year is less than the rate of induced pregnancy terminations in the State for fiscal year 1995.

"(B) ILLEGITIMACY RATIO.—As used in this paragraph, the term 'illegitimacy ratio' means, with respect to a State and a fiscal year—

"(i) the number of out-of-wedlock births that occurred in the State during the most recent fiscal year for which such information is available; divided by

"(ii) the number of births that occurred in the State during the most recent fiscal year for which such information is available.

"(C) DISREGARD OF CHANGES IN DATA DUE TO CHANGED REPORTING METHODS.—For purposes of subparagraph (A), the Secretary shall disregard—

"(i) any difference between the illegitimacy ratio of a State for a fiscal year and the illegitimacy ratio of the State for fiscal year 1995 which is attributable to a change in State methods of reporting data used to calculate the illegitimacy ratio; and

"(ii) any difference between the rate of induced pregnancy terminations in a State for a fiscal year and such rate for fiscal year 1995 which is attributable to a change in State methods of reporting data used to calculate such rate.

"(3) SUPPLEMENTAL GRANT FOR POPULATION INCREASES IN CERTAIN STATES.—

"(A) IN GENERAL.—In addition to any grant under paragraph (1), each qualifying State shall, subject to subparagraph (E), be entitled to receive from the Secretary for each of fiscal years 1997, 1998, 1999, and 2000, a grant in an amount equal to the sum of—

"(i) the amount (if any) required to be paid to the State under this paragraph for the immediately preceding fiscal year; and

"(ii) 2.5 percent of the sum of—

"(I) the total amount required to be paid to the State under part A (as in effect during fiscal year 1994) for fiscal year 1994; and

"(II) the amount (if any) required to be paid to the State under this paragraph for the fiscal year preceding the fiscal year specified in the matter preceding clause (i).

"(B) QUALIFYING STATE.—

"(i) IN GENERAL.—For purposes of this paragraph, a State is a qualifying State for a fiscal year if—

"(I) the level of welfare spending per poor person by the State for the immediately preceding fiscal year is less than the national average level of State welfare spending per poor person for such preceding fiscal year; and

"(II) the population growth rate of the State (as determined by the Bureau of the Census for the most recent fiscal year for which information is available exceeds the average population growth rate for all States (as so determined) for such most recent fiscal year.

"(ii) STATE MUST QUALIFY IN FISCAL YEAR 1997.—Notwithstanding clause (i), a State shall not be a qualifying State for any fiscal year after 1997 by reason of clause (i) if the State is not a qualifying State for fiscal year 1997 by reason of clause (i).

"(iii) CERTAIN STATES DEEMED QUALIFYING STATES.—For purposes of this paragraph, a State is deemed to be a qualifying State for fiscal years 1997, 1998, 1999, and 2000 if—

"(I) the level of welfare spending per poor person by the State for fiscal year 1996 is less than 35 percent of the national average level of State welfare spending per poor person for fiscal year 1996; or

"(II) the population of the State increased by more than 10 percent from April 1, 1990 to July 1, 1994, as determined by the Bureau of the Census.

"(C) DEFINITIONS.—As used in this paragraph:

"(i) LEVEL OF WELFARE SPENDING PER POOR PERSON.—The term 'level of State welfare spending per poor person' means, with respect to a State and a fiscal year—

"(I) the sum of—

"(aa) the total amount required to be paid to the State under part A (as in effect during fiscal year 1994) for fiscal year 1994; and

"(bb) the amount (if any) paid to the State under this paragraph for the immediately preceding fiscal year; divided by

"(II) the number of individuals, according to the 1990 decennial census, who were residents of the State and whose income was below the poverty line.

"(ii) NATIONAL AVERAGE LEVEL OF STATE WELFARE SPENDING PER POOR PERSON.—The term 'national aver-

age level of State welfare spending per poor person' means, with respect to a fiscal year, an amount equal to—

"(I) the total amount required to be paid to the States under part A (as in effect during fiscal year 1994) for fiscal year 1994; divided by

"(II) the number of individuals, according to the 1990 decennial census, who were residents of any State and whose income was below the poverty line.

"(iii) STATE.—The term 'State' means each of the 50 States of the United States and the District of Columbia.

"(D) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated 1996, 1997, 1998, 1999, and 2000 such sums as are necessary for grants under this paragraph, in a total amount not to exceed $800,000,000.

"(E) GRANTS REDUCED PRO RATA IF INSUFFICIENT APPROPRIATIONS.—If the amount appropriated pursuant to this paragraph for a fiscal year is less than the total amount of payments otherwise required to be made under this paragraph for the fiscal year, then the amount otherwise payable to each qualifying State for the fiscal year under this paragraph shall be reduced by a percentage equal to the amount so appropriated divided by such total amount.

"(b) CONTINGENCY FUND.—

"(1) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a fund which shall be known as the 'Contingency Fund for State Welfare Programs' (in this section referred to as the 'Fund').

"(2) DEPOSITS INTO FUND.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1996, 1997, 1998, 1999, and 2000 such sums as are necessary for payment to the Fund in a total amount not to exceed $800,000,000.

"(3) COMPUTATION OF GRANT.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Secretary of the Treasury shall pay to each eligible State for a fiscal year an amount equal to the Federal medical assistance percentage for the State for the fiscal year (as defined in section 1905(b), as in effect on the date of the enactment of this part) of so much of the expenditures by the State in the fiscal year under the State program funded under this part as exceed the historic State expenditures (as defined in section 408(a)(7)(B)(iii)) for the State.

"(B) LIMITATION.—The total amount paid to a State under subparagraph (A) for any fiscal year shall not exceed an amount equal to 20 percent of the State family assistance grant for the fiscal year.

"(C) METHOD OF RECONCILIATION.—If, at the end of any fiscal year, the Secretary finds that a State to which amounts from the Fund were paid in the fiscal year did not

meet the maintenance of effort requirement under paragraph (4)(B) for the fiscal year, the Secretary shall reduce the grant payable to the State under subsection (a)(1) for the immediately succeeding fiscal year by such amounts.

''(4) ELIGIBLE STATE.—

''(A) IN GENERAL.—For purposes of this subsection, a State is an eligible State for a fiscal year, if—

''(i)(I) the average rate of total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published equals or exceeds 6.5 percent; and

''(II) the average rate of total unemployment in such State (seasonally adjusted) for the 3-month period equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; and

''(ii) has met the maintenance of effort requirement under subparagraph (B) for the State program funded under this part for the fiscal year.

''(B) MAINTENANCE OF EFFORT.—The maintenance of effort requirement for any State under this subparagraph for any fiscal year is the expenditure by the State during the fiscal year of an amount at least equal to 100 percent of the level of historic State expenditures for the State (as determined under section 408(e)).

''(5) STATE.—As used in this subsection, the term 'State' means each of the 50 States of the United States and the District of Columbia.

''(c) CONDITION OF GRANT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, as a condition of receiving a grant under this section, a State shall not provide cash assistance to a family that includes an adult who has received assistance under any State program funded under this part for 60 months (whether or not consecutive) after September 30, 1995, except as provided in paragraphs (2) and (3).

''(2) MINOR CHILD EXCEPTION.—In determining the number of months for which an individual who is a parent or pregnant, as the case may be, has received assistance under the State program funded under this part, there shall be disregarded any month for which such assistance was provided with respect to the individual and throughout which the individual was—

''(A) a minor child; and

''(B) not the head of a household or married to the head of a household.

''(3) HARDSHIP EXCEPTION.—

''(A) IN GENERAL.—The State may exempt a family from the application of paragraph (1) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

''(B) LIMITATION.—The number of families with respect to which an exemption made by a State under subparagraph (A) is in effect for a fiscal year shall not exceed 15 percent of the average monthly number of families to which

the State is providing assistance under the program funded under this part.

"(C) BATTERED OR SUBJECT TO EXTREME CRUELTY DEFINED.—For purposes of subparagraph (A), an individual has been battered or subjected to extreme cruelty if the individual has been subjected to—

"(i) physical acts that resulted in, or threatened to result in, physical injury to the individual;

"(ii) sexual abuse;

"(iii) sexual activity involving a dependent child;

"(iv) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

"(v) threats of, or attempts at, physical or sexual abuse;

"(vi) mental abuse; or

"(vii) neglect or deprivation of medical care.

"(4) RULE OF INTERPRETATION.—Paragraph (1) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

"SEC. 403. USE OF GRANTS.

"(a) GENERAL RULES.—Subject to this part, a State to which a grant is made under section 402 may use the grant—

"(1) in any manner that is reasonably calculated to increase the flexibility of States in operating a program designed to—

"(A) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

"(B) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

"(C) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

"(D) encourage the formation and maintenance of two-parent families; and

"(2) in any manner that the State was authorized to use amounts received under part A or F of this title, as such parts were in effect on September 30, 1995.

"(b) LIMITATION ON USE OF GRANT FOR ADMINISTRATIVE PURPOSES.—

"(1) LIMITATION.—A State to which a grant is made under section 402 shall not expend more than 15 percent of the grant for administrative purposes.

"(2) EXCEPTION.—Paragraph (1) shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under this part.

"(c) AUTHORITY TO USE PORTION OF GRANT FOR OTHER PURPOSES.—

"(1) IN GENERAL.—A State may use not more than 30 percent of the amount of the grant made to the State under section

402 for a fiscal year to carry out a State program pursuant to any or all of the following provisions of law:

"(A) Part B of this title.

"(B) Title XX of this Act.

"(C) The Child Care and Development Block Grant Act of 1990.

"(2) APPLICABLE RULES.—Any amount paid to the State under this part that is used to carry out a State program pursuant to a provision of law specified in paragraph (1) shall not be subject to the requirements of this part, but shall be subject to the requirements that apply to Federal funds provided directly under the provision of law to carry out the program.

"(d) AUTHORITY TO RESERVE CERTAIN AMOUNTS FOR ASSISTANCE.—A State may reserve amounts paid to the State under this part for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State program funded under this part.

"(e) AUTHORITY TO OPERATE EMPLOYMENT PLACEMENT PROGRAM.—A State to which a grant is made under section 402 may use the grant to make payments (or provide job placement vouchers) to State-approved public and private job placement agencies that provide employment placement services to individuals who receive assistance under the State program funded under this part.

"(f) IMPLEMENTATION OF ELECTRONIC BENEFIT TRANSFER SYSTEM.—A State to which a grant is made under section 402 is encouraged to implement an electronic benefit transfer system for providing assistance under the State program funded under this part, and may use the grant for such purpose.

"SEC. 404. ADMINISTRATIVE PROVISIONS.

"(a) QUARTERLY.—The Secretary shall pay each grant payable to a State under section 402 in quarterly installments.

"(b) NOTIFICATION.—Not later than 3 months before the payment of any such quarterly installment to a State, the Secretary shall notify the State of the amount of any reduction determined under section 411(a)(1)(B) with respect to the State.

"(c) COMPUTATION AND CERTIFICATION OF PAYMENTS TO STATES.—

"(1) COMPUTATION.—The Secretary shall estimate the amount to be paid to each eligible State for each quarter under this part, such estimate to be based on a report filed by the State containing an estimate by the State of the total sum to be expended by the State in the quarter under the State program funded under this part and such other information as the Secretary may find necessary.

"(2) CERTIFICATION.—The Secretary of Health and Human Services shall certify to the Secretary of the Treasury the amount estimated by the Secretary under paragraph (1) with respect to a State.

"(d) PAYMENT METHOD.—Upon receipt of a certification under subsection (c)(2) with respect to a State, the Secretary of the Treasury shall, through the Fiscal Service of the Department of the Treasury and before audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

"SEC. 405. FEDERAL LOANS FOR STATE WELFARE PROGRAMS.

"(a) LOAN AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall make loans to any loan-eligible State, for a period to maturity of not more than 3 years.

"(2) LOAN-ELIGIBLE STATE.—As used in paragraph (1), the term 'loan-eligible State' means a State against which a penalty has not been imposed under section 408(a)(1) at any time before the loan is to be made.

"(b) RATE OF INTEREST.—The Secretary shall charge and collect interest on any loan made under this section at a rate equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan.

"(c) USE OF LOAN.—A State shall use a loan made to the State under this section only for any purpose for which grant amounts received by the State under section 402(a) may be used including—

"(1) welfare anti-fraud activities; and

"(2) the provision of assistance under the State program to Indian families that have moved from the service area of an Indian tribe with a tribal family assistance plan approved under section 411.

"(d) LIMITATION ON TOTAL AMOUNT OF LOANS TO A STATE.—The cumulative dollar amount of all loans made to a State under this section during fiscal years 1996 through 2000 shall not exceed 10 percent of the State family assistance grant.

"(e) LIMITATION ON TOTAL AMOUNT OF OUTSTANDING LOANS.—The total dollar amount of loans outstanding under this section may not exceed $1,700,000,000.

"(f) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary for the cost of loans under this section.

"SEC. 406. MANDATORY WORK REQUIREMENTS.

"(a) PARTICIPATION RATE REQUIREMENTS.—

"(1) ALL FAMILIES.—A State to which a grant is made under section 402 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assistance under the State program funded under this part:

"If the fiscal year is:	***The minimum participation rate is:***
1996	*15*
1997	*20*
1998	*25*
1999	*30*
2000	*35*
2001	*40*
2002 or thereafter	*50.*

"(2) 2-PARENT FAMILIES.—A State to which a grant is made under section 402 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part:

"If the fiscal year is:	***The minimum participation rate is:***
1996	*50*
1997	*75*
1998	*75*
1999 or thereafter	*90.*

"(b) CALCULATION OF PARTICIPATION RATES.—

"(1) ALL FAMILIES.—

"(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(1), the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

"(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for all families of the State for a month, expressed as a percentage, is—

"(i) the number of families receiving assistance under the State program funded under this part that include an adult who is engaged in work for the month; divided by

"(ii) the amount by which—

"(I) the number of families receiving such assistance during the month that include an adult receiving such assistance; exceeds

"(II) the number of families receiving such assistance that are subject in such month to a reduction or termination of assistance pursuant to section 408(a)(2) but have not been subject to such penalty for more than 3 months within the preceding 12-month period (whether or not consecutive).

"(2) 2-PARENT FAMILIES.—

"(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(2), the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

"(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1)(B), except that in the formula the term 'number of 2-parent families' shall be substituted for the term 'number of families' each place such latter term appears.

"(3) PRO RATA REDUCTION OF PARTICIPATION RATE DUE TO CASELOAD REDUCTIONS NOT REQUIRED BY FEDERAL LAW.—

"(A) IN GENERAL.—The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which—

"(i) the number of families receiving assistance during the fiscal year under the State program funded under this part is less than

"(ii) the number of families that received aid under the State plan approved under part A of this title (as in effect on September 30, 1995) during the fiscal year immediately preceding such effective date.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

"(B) ELIGIBILITY CHANGES NOT COUNTED.—The regulations described in subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part and eligibility criteria under such State's plan under the aid to families with dependent children program, as such plan was in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995. Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

"(4) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN.—For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families receiving assistance under a tribal family assistance plan approved under section 411.

"(c) ENGAGED IN WORK.—

"(1) ALL FAMILIES.—For purposes of subsection (b)(1)(B)(i), a recipient is engaged in work for a month in a fiscal year if the recipient is participating in such activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (7), or (8) of subsection (d) (or, in the case of the first 4 weeks for which the recipient is required under this section to participate in work activities, an activity described in subsection (d)(6)):

"If the month is in fiscal year:	***The minimum average number of hours per week is:***
1996	*20*
1997	*20*
1998	*20*
1999	*25*
2000	*30*
2001	*30*
2002	*35*
2003 or thereafter	*35.*

"(2) 2-PARENT FAMILIES.—For purposes of subsection (b)(2)(B)(i), an adult is engaged in work for a month in a fiscal year if the adult is making progress in such activities for at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (7), or (8) of subsection (d) (or, in the case of the first 4 weeks for which the re-

cipient is required under this section to participate in work activities, an activity described in subsection (d)(6)).

“(3) LIMITATION ON VOCATIONAL EDUCATION ACTIVITIES COUNTED AS WORK.—For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B)(i) of subsection (b), not more than 20 percent of adults in all families and in 2-parent families determined to be engaged in work in the State for a month may meet the work activity requirement through participation in vocational educational training.

“(d) WORK ACTIVITIES DEFINED.—As used in this section, the term ‘work activities’ means—

“(1) unsubsidized employment;

“(2) subsidized private sector employment;

“(3) subsidized public sector employment;

“(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

“(5) on-the-job training;

“(6) job search and job readiness assistance;

“(7) community service programs;

“(8) vocational educational training (not to exceed 12 months with respect to any individual);

“(9) job skills training directly related to employment;

“(10) education directly related to employment, in the case of a recipient who has not attained 20 years of age, and has not received a high school diploma or a certificate of high school equivalency; and

“(11) satisfactory attendance at secondary school, in the case of a recipient who—

“(A) has not completed secondary school; and

“(B) is a dependent child, or a head of household who has not attained 20 years of age.

“SEC. 407. PROHIBITIONS.

“(a) IN GENERAL.—

“(1) NO ASSISTANCE FOR FAMILIES WITHOUT A MINOR CHILD.—A State to which a grant is made under section 402 may not use any part of the grant to provide assistance to a family, unless the family includes—

“(A) a minor child who resides with a custodial parent or other adult caretaker relative of the child; or

“(B) a pregnant individual.

“(2) REDUCED ASSISTANCE FOR FAMILY IF ADULT REFUSES TO WORK.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a State to which a grant is made under section 402 may not fail to—

“(i) reduce the amount of assistance otherwise payable to a family receiving assistance under the State program funded under this part, pro rata (or more, at the option of the State) with respect to any period during a month in which an adult member of the family refuses to engage in work required in accordance with this section; or

“(ii) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), a State may not reduce or terminate assistance under the State program funded under this part based on a refusal of an adult to work if the adult is a single custodial parent caring for a child who has not attained 6 years of age, and the adult proves that the adult has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

"(i) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site.

"(ii) Unavailability or unsuitability of informal child care by a relative or under other arrangements.

"(iii) Unavailability of appropriate and affordable formal child care arrangements.

"(3) REDUCTION OR ELIMINATION OF ASSISTANCE FOR NONCOOPERATION IN CHILD SUPPORT.—If the agency responsible for administering the State plan approved under part D determines that an individual is not cooperating with the State in establishing, modifying, or enforcing a support order with respect to a child of the individual, then the State—

"(A) shall deduct from the assistance that would otherwise be provided to the family of the individual under the State program funded under this part the share of such assistance attributable to the individual; and

"(B) may deny the family any assistance under the State program.

"(4) NO ASSISTANCE FOR FAMILIES NOT ASSIGNING CERTAIN SUPPORT RIGHTS TO THE STATE.—

"(A) IN GENERAL.—A State to which a grant is made under section 402 may not fail to require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family leaves the program, which assignment, on and after the date the the family leaves the program, shall not apply with respect to—

"(i) if the assignment occurs on or after October 1, 1997, and before October 1, 2000, any support (other than support collected pursuant to section 464) which accrued before the family received such assistance and which the State has not collected by September 30, 2000; or

"(ii) if the assignment occurs on or after October 1, 2000, any support (other than support collected pursuant to section 464) which accrued before the family re-

ceived such assistance and which the State has not collected by the date the family leaves the program.

"(B) LIMITATION.—A State to which a grant is made under section 402 may not require, as a condition of providing assistance to any family under the State program funded under this part, that a member of the family assign to the State any rights to support described in subparagraph (A) which accrue after the date the family leaves the program.

"(5) NO ASSISTANCE FOR TEENAGE PARENTS WHO DO NOT ATTEND HIGH SCHOOL OR OTHER EQUIVALENT TRAINING PROGRAM.—A State to which a grant is made under section 402 may not use any part of the grant to provide assistance to an individual who has not attained 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not successfully completed a high-school education (or its equivalent), if the individual does not participate in—

"(A) educational activities directed toward the attainment of a high school diploma or its equivalent; or

"(B) an alternative educational or training program that has been approved by the State.

"(6) NO ASSISTANCE FOR TEENAGE PARENTS NOT LIVING IN ADULT-SUPERVISED SETTINGS.—

"(A) IN GENERAL.—

"(i) REQUIREMENT.—Except as provided in subparagraph (B), a State to which a grant is made under section 402 may not use any part of the grant to provide assistance to an individual described in clause (ii) of this subparagraph if the individual and the minor child referred to in clause (ii)(II) do not reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as such parent's, guardian's, or adult relative's own home.

"(ii) INDIVIDUAL DESCRIBED.— For purposes of clause (i), an individual described in this clause is an individual who—

"(I) has not attained 18 years of age; and

"(II) is not married, and has a minor child in his or her care.

"(B) EXCEPTION.—

"(i) PROVISION OF, OR ASSISTANCE IN LOCATING, ADULT-SUPERVISED LIVING ARRANGEMENT.—In the case of an individual who is described in clause (ii), the State agency referred to in section 401(a)(4) shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless the State agency determines that the individual's current living arrangement is appropriate, and thereafter shall require that the individual and the minor child referred to in subparagraph (A)(ii)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State pro-

gram funded under this part (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate).

“(ii) INDIVIDUAL DESCRIBED.—For purposes of clause (i), an individual is described in this clause if the individual is described in subparagraph (A)(ii), and—

“(I) the individual has no parent, legal guardian or other appropriate adult relative described in subclause (II) of his or her own who is living or whose whereabouts are known;

“(II) no living parent, legal guardian, or other appropriate adult relative, who would otherwise meet applicable State criteria to act as the individual's legal guardian, of such individual allows the individual to live in the home of such parent, guardian, or relative;

“(III) the State agency determines that—

“(aa) the individual or the minor child referred to in subparagraph (A)(ii)(II) is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian; or

“(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual's own parent or legal guardian; or

“(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

“(iii) SECOND-CHANCE HOME.—For purposes of this subparagraph, the term ‘second-chance home’ means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

“(7) NO MEDICAL SERVICES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a State to which a grant is made under section 402 may not use any part of the grant to provide medical services.

“(B) EXCEPTION FOR FAMILY PLANNING SERVICES.—As used in subparagraph (A), the term ‘medical services’ does not include family planning services.

“(8) DENIAL OF ASSISTANCE FOR 10 YEARS TO A PERSON FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN ASSISTANCE IN 2 OR MORE STATES.—a State to which a grant is made under section 402 may not use any

part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under this title, title XIX, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under title XVI.

''(9) DENIAL OF ASSISTANCE FOR FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS.—

''(A) IN GENERAL.—A State to which a grant is made under section 402 may not use any part of the grant to provide assistance to any individual who is—

''(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

''(ii) violating a condition of probation or parole imposed under Federal or State law.

''(B) EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AGENCIES.—If a State to which a grant is made under section 402 establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that—

''(i) such recipient—

''(I) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the recipient flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the recipient flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State;

''(II) is violating a condition of probation or parole imposed under Federal or State law; or

''(III) has information that is necessary for the officer to conduct the official duties of the officer; and

''(ii) the location or apprehension of the recipient is within such official duties.

''(10) DENIAL OF ASSISTANCE FOR MINOR CHILDREN WHO ARE ABSENT FROM THE HOME FOR A SIGNIFICANT PERIOD.—

''(A) IN GENERAL.—A State to which a grant is made under section 402 may not use any part of the grant to pro-

vide assistance for a minor child who has been, or is expected by a parent (or other caretaker relative) of the child to be, absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 90 consecutive days as the State may provide for in the State plan submitted pursuant to section 401.

"(B) STATE AUTHORITY TO ESTABLISH GOOD CAUSE EXCEPTIONS.—The State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in the State plan submitted pursuant to section 401.

"(C) DENIAL OF ASSISTANCE FOR RELATIVE WHO FAILS TO NOTIFY STATE AGENCY OF ABSENCE OF CHILD.—A State to which a grant is made under section 402 may not use any part of the grant to provide assistance for an individual who is a parent (or other caretaker relative) of a minor child and who fails to notify the agency administering the State program funded under this part, of the absence of the minor child from the home for the period specified in or provided for under subparagraph (A), by the end of the 5-day period that begins with the date that it becomes clear to the parent (or relative) that the minor child will be absent for such period so specified or provided for.

"(11) INCOME SECURITY PAYMENTS NOT TO BE DISREGARDED IN DETERMINING THE AMOUNT OF ASSISTANCE TO BE PROVIDED TO A FAMILY.—If a State to which a grant is made under section 402 uses any part of the grant to provide assistance for any individual who is receiving a payment under a State plan for old-age assistance approved under section 2, a State program funded under part B that provides cash payments for foster care, or the supplemental security income program under title XVI, then the State may not disregard the payment in determining the amount of assistance to be provided to the family of which the individual is a member under the State program funded under this part.

"SEC. 408. PENALTIES.

"(a) IN GENERAL.—Subject to subsections (b), (c), and (d):

"(1) FOR USE OF GRANT IN VIOLATION OF THIS PART.—

"(A) GENERAL PENALTY.—If an audit conducted under chapter 75 of title 31, United States Code, finds that an amount paid to a State under section 402 for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 402(a)(1) for the immediately succeeding fiscal year quarter by the amount so used.

"(B) ENHANCED PENALTY FOR INTENTIONAL VIOLATIONS.—If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 402(a)(1) for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

"(2) FOR FAILURE TO SUBMIT REQUIRED REPORT.—

"(A) IN GENERAL.—If the Secretary determines that a State has not, within 6 months after the end of a fiscal year, submitted the report required by section 410 for the fiscal year, the Secretary shall reduce the grant payable to the State under section 402(a)(1) for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

"(B) RESCISSION OF PENALTY.—The Secretary shall rescind a penalty imposed on a State under subparagraph (A) with respect to a report for a fiscal year if the State submits the report before the end of the immediately succeeding fiscal year.

"(3) FOR FAILURE TO SATISFY MINIMUM PARTICIPATION RATES.—

"(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 402 for a fiscal year has failed to comply with section 406(a) for the fiscal year, the Secretary shall reduce the grant payable to the State under section 402(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

"(B) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) based on the degree of noncompliance.

"(4) FOR FAILURE TO PARTICIPATE IN THE INCOME AND ELIGIBILITY VERIFICATION SYSTEM.—If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1137, the Secretary shall reduce the grant payable to the State under section 402(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

"(5) FOR FAILURE TO COMPLY WITH PATERNITY ESTABLISHMENT AND CHILD SUPPORT ENFORCEMENT REQUIREMENTS UNDER PART D.—Notwithstanding any other provision of this Act, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D against recipients of assistance under the State program who fail to cooperate in establishing paternity in accordance with such part, the Secretary shall reduce the grant payable to the State under section 402(a)(1) for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

"(6) FOR FAILURE TO TIMELY REPAY A FEDERAL LOAN FUND FOR STATE WELFARE PROGRAMS.—If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 405 within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 402(a)(1) for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the inter-

est owed on the outstanding amount. The Secretary may not forgive any outstanding loan amount or interest owed on the outstanding amount.

"(7) MAINTENANCE OF EFFORT.—

"(A) IN GENERAL.—The Secretary shall reduce the grant payable to the State under section 402(a)(1) for fiscal year 1996, 1997, 1998, 1999, or 2000 by the amount (if any) by which State expenditures under the State program funded under this part for the then immediately preceding fiscal year is less than the applicable percentage of historic State expenditures.

"(B) DEFINITIONS.—As used in this paragraph:

"(i) STATE EXPENDITURES UNDER THE STATE PROGRAM FUNDED UNDER THIS PART.—

"(I) IN GENERAL.—The term 'State expenditures under the State program funded under this part' means, with respect to a State and a fiscal year, the sum of the expenditures by the State under the program for the fiscal year for—

"(aa) cash assistance;

"(bb) child care assistance;

"(cc) education, job training, and work;

"(dd) administrative costs; and

"(ee) any other use of funds allowable under section 403(a)(1).

"(II) EXCLUSION OF TRANSFERS FROM OTHER STATE AND LOCAL PROGRAMS.—Such term does not include funding supplanted by transfers from other State and local programs.

"(ii) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means—

"(I) for fiscal year 1996, 75 percent; and

"(II) for fiscal years 1997, 1998, 1999, and 2000, 75 percent reduced (if appropriate) in accordance with subparagraph (C)(iii).

"(iii) HISTORIC STATE EXPENDITURES.—The term 'historic State expenditures' means, with respect to a State, the lesser of—

"(I) the expenditures by the State under parts A and F of this title (as in effect during fiscal year 1994) for fiscal year 1994; or

"(II) the amount which bears the same ratio to the amount described in subclause (I) as—

"(aa) the State family assistance grant for the immediately preceding fiscal year; bears to

"(bb) the total amount of Federal payments to the State under section 403 (as in effect during fiscal year 1994) for fiscal year 1994.

"(iv) EXPENDITURES BY THE STATE.—The term 'expenditures by the State' does not include any expenditures from amounts made available by the Federal Government, State funds expended for the medicaid program under title XIX or the MediGrant program

under title XXI, or any State funds which are used to match Federal funds or are expended as a condition of receiving Federal funds under Federal programs other than under title I.

"(C) APPLICABLE PERCENTAGE REDUCED FOR STATES WITH BEST OR MOST IMPROVED PERFORMANCE IN CERTAIN AREAS.—

"(i) SCORING OF STATE PERFORMANCE.—Beginning with fiscal year 1997, the Secretary shall assign to each State a score that represents the performance of the State for the fiscal year in each category described in clause (ii).

"(ii) CATEGORIES.—The categories described in this clause are the following:

"(I) Increasing the number of families that received assistance under a State program funded under this part in the fiscal year, and that, during the fiscal year, become ineligible for such assistance as a result of unsubsidized employment.

"(II) Reducing the percentage of families that, within 18 months after becoming ineligible for assistance under the State program funded under this part, become eligible for such assistance.

"(III) Increasing the amount earned by families that receive assistance under this part.

"(IV) Reducing the percentage of families in the State that receive assistance under the State program funded under this part.

"(iii) REDUCTION OF MAINTENANCE OF EFFORT THRESHOLD.—

"(I) REDUCTION FOR STATES WITH 5 GREATEST SCORES IN EACH CATEGORY OF PERFORMANCE.—The applicable percentage for a State for a fiscal year shall be reduced by 2 percentage points, with respect to each category described in clause (ii) for which the score assigned to the State under clause (i) for the fiscal year is 1 of the 5 highest scores so assigned to States.

"(II) REDUCTION FOR STATES WITH 5 GREATEST IMPROVEMENT IN SCORES IN EACH CATEGORY OF PERFORMANCE.—The applicable percentage for a State for a fiscal year shall be reduced by 2 percentage points for a State for a fiscal year, with respect to each category described in clause (ii) for which the difference between the score assigned to the State under clause (i) for the fiscal year and the score so assigned to the State for the immediately preceding fiscal year is 1 of the 5 greatest such differences.

"(III) LIMITATION ON REDUCTION.—The applicable percentage for a State for a fiscal year may not be reduced by more than 8 percentage points pursuant to this clause.

"(8) PENALTIES FOR SUBSTANTIAL NONCOMPLIANCE OF STATE CHILD SUPPORT ENFORCEMENT PROGRAM WITH REQUIREMENTS OF PART D.—

"(A) IN GENERAL.—If a State program operated under part D is found as a result of a review conducted under section 452(a)(4) not to have complied substantially with the requirements of such part for any quarter, and the Secretary determines that the program is not complying substantially with such requirements at the time the finding is made, the Secretary shall, subject to paragraph (2), reduce the grant payable to the State under section 402(a)(1) for the quarter and each subsequent quarter that ends before the 1st quarter throughout which the program is found not to be in substantial compliance with such requirements by—

"(i) not less than 1 nor more than 2 percent;

"(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive such finding made as a result of such a review; or

"(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding made as a result of such a review.

"(B) DISREGARD OF NONCOMPLIANCE WHICH IS OF A TECHNICAL NATURE.—For purposes of subparagraph (A) and section 452(a)(4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the State's program operated under part D.

"(9) FOR FAILURE TO EXPEND ADDITIONAL STATE FUNDS TO REPLACE GRANT REDUCTIONS.—If the grant payable to a State under section 402(a)(1) for a fiscal year is reduced by reason of any of the preceding paragraphs of this subsection, the State shall, during the immediately succeeding fiscal year, expend under the State program funded under this part an amount equal to the sum of—

"(A) the applicable percentage of the historic State expenditures; and

"(B) 105 percent of the total amount of such reductions under such preceding paragraphs.

"(b) REASONABLE CAUSE EXCEPTION.—The Secretary may not impose a penalty on a State under subsection (a) with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

"(c) CORRECTIVE COMPLIANCE PLAN.—

"(1) IN GENERAL.—

"(A) NOTIFICATION OF VIOLATION.—Notwithstanding any other provision of law, the Federal Government shall, before assessing a penalty against a State under subsection (a), notify the State of the violation of law for which the penalty would be assessed and allow the State the opportunity to enter into a corrective compliance plan in accord-

ance with this subsection which outlines how the State will correct any such violations and how the State will insure continuing compliance with the requirements of this part.

"(B) 60-DAY PERIOD TO PROPOSE A CORRECTIVE COMPLIANCE PLAN.—Any State notified under subparagraph (A) shall have 60 days in which to submit to the Federal Government a corrective compliance plan to correct any violations described in subparagraph (A).

"(C) ACCEPTANCE OF PLAN.—The Federal Government shall have 60 days to accept or reject the State's corrective compliance plan and may consult with the State during this period to modify the plan. If the Federal Government does not accept or reject the corrective compliance plan during the period, the corrective compliance plan shall be deemed to be accepted.

"(2) FAILURE TO CORRECT.—If a corrective compliance plan is accepted by the Federal Government, no penalty shall be imposed with respect to a violation described in paragraph (1) if the State corrects the violation pursuant to the plan. If a State has not corrected the violation in a timely manner under the plan, some or all of the penalty shall be assessed.

"(d) LIMITATION ON AMOUNT OF PENALTY.—

"(1) IN GENERAL.—In imposing the penalties described in subsection (a), the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

"(2) CARRYFORWARD OF UNRECOVERED PENALTIES.—To the extent that paragraph (1) prevents the Secretary from recovering during a fiscal year the full amount of all penalties imposed on a State under subsection (a) for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 402(a)(1) for the immediately succeeding fiscal year.

"SEC. 409. APPEAL OF ADVERSE DECISION.

"(a) IN GENERAL.—Within 5 days after the date any adverse decision is made or action is taken under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse decision or action, including any decision with respect to the State plan submitted under section 401 or the imposition of a penalty under section 408.

"(b) ADMINISTRATIVE REVIEW OF ADVERSE DECISION.—

"(1) IN GENERAL.—Within 60 days after the date a State receives notice under this section of an adverse decision, the State may appeal the decision, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the 'Board') by filing an appeal with the Board.

"(2) PROCEDURAL RULES.—The Board shall consider a State's appeal on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold an adverse decision or any portion of such a decision, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination

with respect to an appeal filed under this paragraph not less than 60 days after the date the appeal is filed.

"(c) JUDICIAL REVIEW OF ADVERSE DECISION.—

"(1) IN GENERAL.—Within 90 days after the date of a final decision by the Board with respect to an adverse decision regarding a State under this section, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in—

"(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

"(B) the United States District Court for the District of Columbia.

"(2) PROCEDURAL RULES.—The district court in which an action is filed shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5, United States Code. The review shall be on the basis of the documents and supporting data submitted to the Board.

"SEC. 410. DATA COLLECTION AND REPORTING.

"(a) GENERAL REPORTING REQUIREMENT.—Beginning July 1, 1996, each State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following information on the families receiving assistance under the State program funded under this part:

"(1) The county of residence of the family.

"(2) Whether a child receiving such assistance or an adult in the family is disabled.

"(3) The ages of the members of such families.

"(4) The number of individuals in the family, and the relation of each family member to the youngest child in the family.

"(5) The employment status and earnings of the employed adult in the family.

"(6) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

"(7) The educational status of each adult in the family.

"(8) The educational status of each child in the family.

"(9) Whether the family received subsidized housing, assistance under the State MediGrant plan approved under title XXI, food stamps, or subsidized child care, and if the latter 2, the amount received.

"(10) The number of months that the family has received each type of assistance under the program.

"(11) If the adults participated in, and the number of hours per week of participation in, the following activities:

"(A) Education.

"(B) Subsidized private sector employment.

"(C) Unsubsidized employment.

"(D) Public sector employment, work experience, or community service.

"(E) Job search.

"(F) Job skills training or on-the-job training.

"(G) Vocational education.

"(12) Information necessary to calculate participation rates under section 406.

"(13) The type and amount of assistance received under the program, including the amount of and reason for any reduction of assistance (including sanctions).

"(14) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to—

"(A) employment;

"(B) marriage;

"(C) the prohibition set forth in section 407(a)(8);

"(D) sanction; or

"(E) State policy.

"(15) Any amount of unearned income received by any member of the family.

"(16) The citizenship of the members of the family.

"(b) USE OF ESTIMATES.—

"(1) AUTHORITY.—A State may comply with subsection (a) by submitting an estimate which is obtained through the use of scientifically acceptable sampling methods approved by the Secretary.

"(2) SAMPLING AND OTHER METHODS.—The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid estimates of the performance of State programs funded under this part. The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

"(c) REPORT ON USE OF FEDERAL FUNDS TO COVER ADMINISTRATIVE COSTS AND OVERHEAD.—The report required by subsection (a) for a fiscal quarter shall include a statement of the percentage of the funds paid to the State under this part for the quarter that are used to cover administrative costs or overhead.

"(d) REPORT ON STATE EXPENDITURES ON PROGRAMS FOR NEEDY FAMILIES.—The report required by subsection (a) for a fiscal quarter shall include a statement of the total amount expended by the State during the quarter on programs for needy families.

"(e) REPORT ON NONCUSTODIAL PARENTS PARTICIPATING IN WORK ACTIVITIES.—The report required by subsection (a) for a fiscal quarter shall include the number of noncustodial parents in the State who participated in work activities (as defined in section 406(d)) during the quarter.

"(f) REPORT ON TRANSITIONAL SERVICES.—The report required by subsection (a) for a fiscal quarter shall include the total amount expended by the State during the quarter to provide transitional services to a family that has ceased to receive assistance under this part because of employment, along with a description of such services.

"(g) REPORT TO CONGRESS.—Not later than 6 months after the end of fiscal year 1997, and each fiscal year thereafter, the Secretary shall transmit to the Congress a report describing—

"(1) whether the States are meeting—

"(A) the participation rates described in section 406(a); and

"(B) the objectives of—

"(i) increasing employment and earnings of needy families, and child support collections; and

"(ii) decreasing out-of-wedlock pregnancies and child poverty;

"(2) the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance;

"(3) the characteristics of each State program funded under this part; and

"(4) the trends in employment and earnings of needy families with minor children living at home.

"SEC. 411. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES.

"(a) GRANTS FOR INDIAN TRIBES.—

"(1) TRIBAL FAMILY ASSISTANCE GRANT.—

"(A) IN GENERAL.—For each of fiscal years 1997, 1998, 1999, and 2000, the Secretary shall pay to each Indian tribe that has an approved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under subparagraph (B), and shall reduce the grant payable under section 402(a)(1) to any State in which lies the service area or areas of the Indian tribe by that portion of the amount so determined that is attributable to expenditures by the State.

"(B) AMOUNT DETERMINED.—

"(i) IN GENERAL.—The amount determined under this subparagraph is an amount equal to the total amount of the Federal payments to a State or States under section 403 for fiscal year 1994 (as in effect during such fiscal year) attributable to expenditures by the State or States under parts A and F of this title (as so in effect) for fiscal year 1994 for Indian families residing in the service area or areas identified by the Indian tribe pursuant to subsection (b)(1)(C).

"(ii) USE OF STATE SUBMITTED DATA.—

"(I) IN GENERAL.—The Secretary shall use State submitted data to make each determination under clause (i).

"(II) DISAGREEMENT WITH DETERMINATION.—If an Indian tribe or tribal organization disagrees with State submitted data described under subclause (I), the Indian tribe or tribal organization may submit to the Secretary such additional information as may be relevant to making the determination under clause (i) and the Secretary may consider such information before making such determination.

"(2) GRANTS FOR INDIAN TRIBES THAT RECEIVED JOBS FUNDS.—

"(A) IN GENERAL.—The Secretary shall pay to each eligible Indian tribe for each of fiscal years 1996, 1997, 1998, 1999, and 2000 a grant in an amount equal to the amount

received by the Indian tribe in fiscal year 1994 under section 482(i) (as in effect during fiscal year 1994).

"(B) ELIGIBLE INDIAN TRIBE.—For purposes of subparagraph (A), the term 'eligible Indian tribe' means an Indian tribe or Alaska Native organization that conducted a job opportunities and basic skills training program in fiscal year 1995 under section 482(i) (as in effect during such fiscal year).

"(C) USE OF GRANT.—Each Indian tribe to which a grant is made under this paragraph shall use the grant for the purpose of operating a program to make work activities available to members of the Indian tribe.

"(D) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $7,638,474 for each fiscal year specified in subparagraph (A) for grants under subparagraph (A).

"(b) 3-YEAR TRIBAL FAMILY ASSISTANCE PLAN.—

"(1) IN GENERAL.—Any Indian tribe that desires to receive a tribal family assistance grant shall submit to the Secretary a 3-year tribal family assistance plan that—

"(A) outlines the Indian tribe's approach to providing welfare-related services for the 3-year period, consistent with this section;

"(B) specifies whether the welfare-related services provided under the plan will be provided by the Indian tribe or through agreements, contracts, or compacts with intertribal consortia, States, or other entities;

"(C) identifies the population and service area or areas to be served by such plan;

"(D) provides that a family receiving assistance under the plan may not receive duplicative assistance from other State or tribal programs funded under this part;

"(E) identifies the employment opportunities in or near the service area or areas of the Indian tribe and the manner in which the Indian tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan consistent with any applicable State standards; and

"(F) applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

"(2) APPROVAL.—The Secretary shall approve each tribal family assistance plan submitted in accordance with paragraph (1).

"(3) CONSORTIUM OF TRIBES.—Nothing in this section shall preclude the development and submission of a single tribal family assistance plan by the participating Indian tribes of an intertribal consortium.

"(c) MINIMUM WORK PARTICIPATION REQUIREMENTS AND TIME LIMITS.—The Secretary, with the participation of Indian tribes, shall establish for each Indian tribe receiving a grant under this section minimum work participation requirements, appropriate time

limits for receipt of welfare-related services under the grant, and penalties against individuals—

"(1) consistent with the purposes of this section;

"(2) consistent with the economic conditions and resources available to each tribe; and

"(3) similar to comparable provisions in section 406(d).

"(d) EMERGENCY ASSISTANCE.—Nothing in this section shall preclude an Indian tribe from seeking emergency assistance from any Federal loan program or emergency fund.

"(e) ACCOUNTABILITY.—Nothing in this section shall be construed to limit the ability of the Secretary to maintain program funding accountability consistent with—

"(1) generally accepted accounting principles; and

"(2) the requirements of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(f) PENALTIES.—

"(1) Subsections (a)(1), (a)(6), and (b) of section 408, shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such subsections apply to a State.

"(2) Section 408(a)(3) shall apply to an Indian tribe with an approved tribal assistance plan by substituting 'meet minimum work participation requirements established under section 411(c)' for 'comply with section 406(a)'.

"(g) DATA COLLECTION AND REPORTING.—Section 410 shall apply to an Indian tribe with an approved tribal family assistance plan.

"(h) SPECIAL RULE FOR INDIAN TRIBES IN ALASKA.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, and except as provided in paragraph (2), a tribal organization in the State of Alaska that receives a tribal family assistance grant under this section shall use the grant to operate a program in accordance with the requirements comparable to the requirements applicable to the program of the State of Alaska funded under this part. Comparability of programs shall be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and the tribal organizations.

"(2) WAIVER.—An Indian tribe described in paragraph (1) may apply to the appropriate State authority to receive a waiver of the requirement of paragraph (1).

"SEC. 412. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.

"(a) RESEARCH.—The Secretary shall conduct research on the benefits, effects, and costs of operating different State programs funded under this part, including time limits relating to eligibility for assistance. The research shall include studies on the effects of different programs and the operation of such programs on welfare dependency, illegitimacy, teen pregnancy, employment rates, child well-being, and any other area the Secretary deems appropriate. The Secretary shall also conduct research on the costs and benefits of State activities under section 406.

"(b) DEVELOPMENT AND EVALUATION OF INNOVATIVE APPROACHES TO REDUCING WELFARE DEPENDENCY AND INCREASING CHILD WELL-BEING.—

"(1) IN GENERAL.—The Secretary may assist States in developing, and shall evaluate, innovative approaches for reducing welfare dependency and increasing the well-being of minor children living at home with respect to recipients of assistance under programs funded under this part. The Secretary may provide funds for training and technical assistance to carry out the approaches developed pursuant to this paragraph.

"(2) EVALUATIONS.—In performing the evaluations under paragraph (1), the Secretary shall, to the maximum extent feasible, use random assignment as an evaluation methodology.

"(c) DISSEMINATION OF INFORMATION.—The Secretary shall develop innovative methods of disseminating information on any research, evaluations, and studies conducted under this section, including the facilitation of the sharing of information and best practices among States and localities through the use of computers and other technologies.

"(d) ANNUAL RANKING OF STATES AND REVIEW OF MOST AND LEAST SUCCESSFUL WORK PROGRAMS.—

"(1) ANNUAL RANKING OF STATES.—The Secretary shall rank annually the States to which grants are paid under section 402 in the order of their success in placing recipients of assistance under the State program funded under this part into long-term private sector jobs, reducing the overall welfare caseload, and, when a practicable method for calculating this information becomes available, diverting individuals from formally applying to the State program and receiving assistance. In ranking States under this subsection, the Secretary shall take into account the average number of minor children living at home in families in the State that have incomes below the poverty line and the amount of funding provided each State for such families.

"(2) ANNUAL REVIEW OF MOST AND LEAST SUCCESSFUL WORK PROGRAMS.—The Secretary shall review the programs of the 3 States most recently ranked highest under paragraph (1) and the 3 States most recently ranked lowest under paragraph (1) that provide parents with work experience, assistance in finding employment, and other work preparation activities and support services to enable the families of such parents to leave the program and become self-sufficient.

"(e) ANNUAL RANKING OF STATES AND REVIEW OF ISSUES RELATING TO OUT-OF-WEDLOCK BIRTHS.—

"(1) ANNUAL RANKING OF STATES.—

"(A) IN GENERAL.—The Secretary shall annually rank States to which grants are made under section 402 based on the following ranking factors:

"(i) ABSOLUTE OUT-OF-WEDLOCK RATIOS.—The ratio represented by—

"(I) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent fiscal year for which information is available; over

"(II) the total number of births in families receiving assistance under the State program under this part in the State for such year.

"(ii) NET CHANGES IN THE OUT-OF-WEDLOCK RATIO.—The difference between the ratio described in subparagraph (A)(i) for the most recent fiscal year for which information is available and such State's ratio determined for the preceding year.

"(2) ANNUAL REVIEW.—The Secretary shall review the programs of the 5 States most recently ranked highest under paragraph (1) and the 5 States most recently ranked the lowest under paragraph (1).

"(f) STATE-INITIATED STUDIES.—A State shall be eligible to receive funding to evaluate the State's family assistance program funded under this part if—

"(1) the State submits a proposal to the Secretary for such evaluation,

"(2) the Secretary determines that the design and approach of the evaluation is rigorous and is likely to yield information that is credible and will be useful to other States, and

"(3) unless otherwise waived by the Secretary, the State provides a non-Federal share of at least 10 percent of the cost of such study.

"(g) FUNDING OF STUDIES AND DEMONSTRATIONS.—

"(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $15,000,000 for each fiscal year specified in section 402(a)(1) for the purpose of paying—

"(A) the cost of conducting the research described in subsection (a);

"(B) the cost of developing and evaluating innovative approaches for reducing welfare dependency and increasing the well-being of minor children under subsection (b);

"(C) the Federal share of any State-initiated study approved under subsection (f); and

"(D) an amount determined by the Secretary to be necessary to operate and evaluate demonstration projects, relating to this part, that are in effect or approved under section 1115 as of September 30, 1995, and are continued after such date.

"(2) ALLOCATION.—Of the amount appropriated under paragraph (1) for a fiscal year—

"(A) 50 percent shall be allocated for the purposes described in subparagraphs (A) and (B) of paragraph (1), and

"(B) 50 percent shall be allocated for the purposes described in subparagraphs (C) and (D) of paragraph (1).

"SEC. 413. STUDY BY THE CENSUS BUREAU.

"(a) IN GENERAL.—The Bureau of the Census shall expand the Survey of Income and Program Participation as necessary to obtain such information as will enable interested persons to evaluate the impact of the amendments made by subtitle A of the Personal Responsibility and Work Opportunity Act of 1995 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low income families,

and in doing so, shall pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells.

"(b) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, and 2000 for payment to the Bureau of the Census to carry out subsection (a).

"SEC. 414. WAIVERS.

"(a) CONTINUATION OF WAIVERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if any waiver granted to a State under section 1115 or otherwise which relates to the provision of assistance under a State plan under this part is in effect or approved by the Secretary as of October 1, 1995, the amendments made by the Personal Responsibility and Work Opportunity Act of 1995 shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the terms of the waiver.

"(2) FINANCING LIMITATION.—Notwithstanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in paragraph (1) shall receive the payment described for such State for such fiscal year under section 402, in lieu of any other payment provided for in the waiver.

"(b) STATE OPTION TO TERMINATE WAIVER.—

"(1) IN GENERAL.—A State may terminate a waiver described in subsection (a) before the expiration of the waiver.

"(2) REPORT.—A State which terminates a waiver under paragraph (1) shall submit a report to the Secretary summarizing the waiver and any available information concerning the result or effect of such waiver.

"(3) HOLD HARMLESS PROVISION.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, a State that, not later than the date described in subparagraph (B), submits a written request to terminate a waiver described in subsection (a) shall be held harmless for accrued cost neutrality liabilities incurred under the terms and conditions of such waiver.

"(B) DATE DESCRIBED.—The date described in this subparagraph is the later of—

"(i) January 1, 1996; or

"(ii) 90 days following the adjournment of the first regular session of the State legislature that begins after the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995.

"(c) SECRETARIAL ENCOURAGEMENT OF CURRENT WAIVERS.—The Secretary shall encourage any State operating a waiver described in subsection (a) to continue such waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of such waiver.

"(d) CONTINUATION OF INDIVIDUAL WAIVERS.—A State may elect to continue one or more individual waivers described in subsection (a)(1).

“SEC. 415. ASSISTANT SECRETARY FOR FAMILY SUPPORT.

“The programs under this part and part D shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to any other Assistant Secretary of Health and Human Services provided for by law.

“SEC. 416. LIMITATION ON FEDERAL AUTHORITY.

“No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.

“SEC. 417. DEFINITIONS.

“As used in this part:

“(1) ADULT.—The term ‘adult’ means an individual who is not a minor child.

“(2) MINOR CHILD.—The term ‘minor child’ means an individual who—

“(A) has not attained 18 years of age; or

“(B) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

“(3) FISCAL YEAR.—The term ‘fiscal year’ means any 12-month period ending on September 30 of a calendar year.

“(4) INDIAN, INDIAN TRIBE, AND TRIBAL ORGANIZATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the terms ‘Indian’, ‘Indian tribe’, and ‘tribal organization’ have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(B) SPECIAL RULE FOR INDIAN TRIBES IN ALASKA.—The term ‘Indian tribe’ means, with respect to the State of Alaska, only the following Alaska Native regional nonprofit corporations:

“(i) Arctic Slope Native Association.

“(ii) Kawerak, Inc.

“(iii) Maniilaq Association.

“(iv) Association of Village Council Presidents.

“(v) Tanana Chiefs Conference.

“(vi) Cook Inlet Tribal Council.

“(vii) Bristol Bay Native Association.

“(viii) Aleutian and Pribilof Island Association.

“(ix) Chugachmuit.

“(x) Tlingit Haida Central Council.

“(xi) Kodiak Area Native Association.

“(xii) Copper River Native Association.

“(xiii) Metlakatla Indian Tribe.

“(5) STATE.—Except as otherwise specifically provided, the term ‘State’ includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.”.

SEC. 12102. REPORT ON DATA PROCESSING.

(a) IN GENERAL.—Within 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to the Congress a report on—

(1) the status of the automated data processing systems operated by the States to assist management in the administration of State programs under part A of title IV of the Social Security Act (whether in effect before or after October 1, 1995); and

(2) what would be required to establish a system capable of—

(A) tracking participants in public programs over time; and

(B) checking case records of the States to determine whether individuals are participating in public programs of 2 or more States.

(b) PREFERRED CONTENTS.—The report required by subsection (a) should include—

(1) a plan for building on the automated data processing systems of the States to establish a system with the capabilities described in subsection (a)(2); and

(2) an estimate of the amount of time required to establish such a system and of the cost of establishing such a system.

SEC. 12103. CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT.

(a) AMENDMENTS TO TITLE II.—

(1) Section 205(c)(2)(C)(vi) (42 U.S.C. 405(c)(2)(C)(vi)), as so redesignated by section 321(a)(9)(B) of the Social Security Independence and Program Improvements Act of 1994, is amended—

(A) by inserting "an agency administering a program funded under part A of title IV or" before "an agency operating"; and

(B) by striking "A or D of title IV of this Act" and inserting "D of such title".

(2) Section 228(d)(1) (42 U.S.C. 428(d)(1)) is amended by inserting "under a State program funded under" before "part A of title IV".

(b) AMENDMENTS TO PART D OF TITLE IV.—

(1) Section 451 (42 U.S.C. 651) is amended by striking "aid" and inserting "assistance under a State program funded".

(2) Section 452(a)(10)(C) (42 U.S.C. 652(a)(10)(C)) is amended—

(A) by striking "aid to families with dependent children" and inserting "assistance under a State program funded under part A";

(B) by striking "such aid" and inserting "such assistance"; and

(C) by striking "under section 402(a)(26) or 471(a)(17)" and inserting "pursuant to section 408(a)(4) or under section 471(a)(17)".

(3) Section 452(a)(10)(F) (42 U.S.C. 652(a)(10)(F)) is amended—

(A) by striking "aid under a State plan approved" and inserting "assistance under a State program funded"; and

(B) by striking "in accordance with the standards referred to in section 402(a)(26)(B)(ii)" and inserting "by the State".

(4) Section 452(b) (42 U.S.C. 652(b)) is amended in the first sentence by striking "aid under the State plan approved under part A" and inserting "assistance under the State program funded under part A".

(5) Section 452(d)(3)(B)(i) (42 U.S.C. 652(d)(3)(B)(i)) is amended by striking "1115(c)" and inserting "1115(b)".

(6) Section 452(g)(2)(A)(ii)(I) (42 U.S.C. 652(g)(2)(A)(ii)(I)) is amended by striking "aid is being paid under the State's plan approved under part A or E" and inserting "assistance is being provided under the State program funded under part A or aid is being paid under the State's plan approved under part E".

(7) Section 452(g)(2)(A) (42 U.S.C. 652(g)(2)(A)) is amended in the matter following clause (iii) by striking "aid was being paid under the State's plan approved under part A or E" and inserting "assistance was being provided under the State program funded under part A or aid was being paid under the State's plan approved under part E".

(8) Section 452(g)(2) (42 U.S.C. 652(g)(2)) is amended in the matter following subparagraph (B)—

(A) by striking "who is a dependent child" and inserting "with respect to whom assistance is being provided under the State program funded under part A";

(B) by inserting "by the State agency administering the State plan approved under this part" after "found"; and

(C) by striking "under section 402(a)(26)" and inserting "with the State in establishing paternity".

(9) Section 452(h) (42 U.S.C. 652(h)) is amended by striking "under section 402(a)(26)" and inserting "pursuant to section 408(a)(4)".

(10) Section 453(c)(3) (42 U.S.C. 653(c)(3)) is amended by striking "aid under part A of this title" and inserting "assistance under a State program funded under part A".

(11) Section 454(5)(A) (42 U.S.C. 654(5)(A))) is amended—

(A) by striking "under section 402(a)(26)" and inserting "pursuant to section 408(a)(4)"; and

(B) by striking "; except that this paragraph shall not apply to such payments for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A;" and inserting a comma.

(12) Section 454(6)(D) (42 U.S.C. 654(6)(D)) is amended by striking "aid under a State plan approved" and inserting "assistance under a State program funded".

(13) Section 456(a)(1) (42 U.S.C. 656(a)(1)) is amended by striking "under section 402(a)(26)".

(14) Section 466(a)(3)(B) (42 U.S.C. 666(a)(3)(B)) is amended by striking "402(a)(26)" and inserting "408(a)(4)".

(15) Section 466(b)(2) (42 U.S.C. 666(b)(2)) is amended by striking "aid" and inserting "assistance under a State program funded".

(16) Section 469(a) (42 U.S.C. 669(a)) is amended—

(A) by striking "aid under plans approved" and inserting "assistance under State programs funded"; and

(B) by striking "such aid" and inserting "such assistance".

(c) REPEAL OF PART F OF TITLE IV.—Part F of title IV (42 U.S.C. 681–687) is repealed.

(d) AMENDMENT TO TITLE X.—Section 1002(a)(7) (42 U.S.C. 1202(a)(7)) is amended by striking "aid to families with dependent children under the State plan approved under section 402 of this Act" and inserting "assistance under a State program funded under part A of title IV".

(e) AMENDMENTS TO TITLE XI.—

(1) Section 1108 (42 U.S.C. 1308) is amended to read as follows:

"SEC. 1108. LIMITATION ON PAYMENTS TO PUERTO RICO, THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, the total amount certified by the Secretary of Health and Human Services under titles I, X, XIV, and XVI, and under parts A and B of title IV for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.

"(b) DEFINITIONS.—As used in this section:

"(1) TERRITORY.—The term 'territory' means Puerto Rico, the Virgin Islands, Guam, and American Samoa.

"(2) CEILING AMOUNT.—The term 'ceiling amount' means, with respect to a territory and a fiscal year, the mandatory ceiling amount with respect to the territory plus the discretionary ceiling amount with respect to the territory, reduced for the fiscal year in accordance with subsection (e).

"(3) MANDATORY CEILING AMOUNT.—The term 'mandatory ceiling amount' means—

"(A) $103,538,000 with respect to for Puerto Rico;

"(B) $4,812,000 with respect to Guam;

"(C) $3,677,397 with respect to the Virgin Islands; and

"(D) $1,122,095 with respect to American Samoa.

"(4) DISCRETIONARY CEILING AMOUNT.—The term 'discretionary ceiling amount' means, with respect to a territory, the dollar amount specified in subsection (c)(2) with respect to the territory.

"(c) DISCRETIONARY GRANTS.—

"(1) IN GENERAL.—The Secretary shall make a grant to each territory for any fiscal year in the amount appropriated pursuant to paragraph (2) for the fiscal year for payment to the territory.

"(2) USE OF GRANT.—Any territory to which a grant is made under paragraph (1) may expend the amount under any program operated or funded under any provision of law specified in subsection (a).

"(3) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For grants under paragraph (1), there are authorized to be appropriated to the Secretary for each fiscal year—

"(A) $7,951,000 for payment to Puerto Rico;

"(B) $345,000 for payment to Guam;

"(C) $275,000 for payment to the Virgin Islands; and

"(D) $190,000 for payment to American Samoa.

"(d) AUTHORITY TO TRANSFER FUNDS AMONG PROGRAMS.—Notwithstanding any other provision of this Act, any territory to which an amount is paid under any provision of law specified in subsection (a) may use part or all of the amount to carry out any program operated by the territory, or funded, under any other such provision of law.

"(e) MAINTENANCE OF EFFORT.—The ceiling amount with respect to a territory shall be reduced for a fiscal year by an amount equal to the amount (if any) by which—

"(1) the total amount expended by the territory under all programs of the territory operated pursuant to the provisions of law specified in subsection (a) (as such provisions were in effect for fiscal year 1995) for fiscal year 1995; exceeds

"(2) the total amount expended by the territory under all programs of the territory that are funded under the provisions of law specified in subsection (a) for the fiscal year that immediately precedes the fiscal year referred to in the matter preceding paragraph (1).".

(2) Section 1109 (42 U.S.C. 1309) is amended by striking "or part A of title IV,".

(3) Section 1115 (42 U.S.C. 1315) is amended—

(A) in subsection (a)(2)—

(i) by inserting "(A)" after "(2)";

(ii) by striking "403,";

(iii) by striking the period at the end and inserting ", and"; and

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

"(B) costs of such project which would not otherwise be a permissible use of funds under part A of title IV and which are not included as part of the costs of projects under section 1110, shall to the extent and for the period prescribed by the Secretary, be regarded as a permissible use of funds under such part."; and

(B) in subsection (c)(3), by striking "under the program of aid to families with dependent children" and inserting "part A of such title".

(4) Section 1116 (42 U.S.C. 1316) is amended—

(A) in each of subsections (a)(1), (b), and (d), by striking "or part A of title IV,"; and

(B) in subsection (a)(3), by striking "404,".

(5) Section 1118 (42 U.S.C. 1318) is amended—

(A) by striking "403(a),";

(B) by striking "and part A of title IV,"; and

(C) by striking ", and shall, in the case of American Samoa, mean 75 per centum with respect to part A of title IV".

(6) Section 1119 (42 U.S.C. 1319) is amended—

(A) by striking "or part A of title IV"; and

(B) by striking "403(a),".

(7) Section 1133(a) (42 U.S.C. 1320b–3(a)) is amended by striking "or part A of title IV,".

(8) Section 1136 (42 U.S.C. 1320b–6) is repealed.

(9) Section 1137 (42 U.S.C. 1320b–7) is amended—

(A) in subsection (b), by striking paragraph (1) and inserting the following:

"(1) any State program funded under part A of title IV of this Act;"; and

(B) in subsection (d)(1)(B)—

(i) by striking "In this subsection—" and all that follows through "(ii) in" and inserting "In this subsection, in";

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

(iii) by moving such redesignated material 2 ems to the left.

(f) AMENDMENT TO TITLE XIV.—Section 1402(a)(7) (42 U.S.C. 1352(a)(7)) is amended by striking "aid to families with dependent children under the State plan approved under section 402 of this Act" and inserting "assistance under a State program funded under part A of title IV".

(g) AMENDMENT TO TITLE XVI AS IN EFFECT WITH RESPECT TO THE TERRITORIES.—Section 1602(a)(11), as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972 (42 U.S.C. 1382 note), is amended by striking "aid under the State plan approved" and inserting "assistance under a State program funded".

(h) AMENDMENT TO TITLE XVI AS IN EFFECT WITH RESPECT TO THE STATES.—Section 1611(c)(5)(A) (42 U.S.C. 1382(c)(5)(A)) is amended to read as follows: "(A) a State program funded under part A of title IV,".

SEC. 12104. CONFORMING AMENDMENTS TO THE FOOD STAMP ACT OF 1977 AND RELATED PROVISIONS.

(a) Section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2014) is amended—

(1) in the second sentence of subsection (a), by striking "plan approved" and all that follows through "title IV of the Social Security Act" and inserting "program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995";

(2) in subsection (d)—

(A) in paragraph (5), by striking "assistance to families with dependent children" and inserting "assistance under a State program funded"; and

(B) by striking paragraph (13) and redesignating paragraphs (14), (15), and (16) as paragraphs (13), (14), and (15), respectively;

(3) in subsection (j), by striking "plan approved under part A of title IV of such Act (42 U.S.C. 601 et seq.)" and inserting "program funded under part A of title IV of the Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995".

(b) Section 6 of such Act (7 U.S.C. 2015) is amended—

(1) in subsection (c)(5), by striking "the State plan approved" and inserting "the State program funded";

(2) in subsection (e)—

(A) by striking "aid to families with dependent children" and inserting "benefits under a State program funded"; and

(B) by inserting before the semicolon the following: "that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995"; and

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

"(i) ELIGIBILITY UNDER OTHER LAW.—Notwithstanding any other provision of this Act, a household may not receive benefits under this Act as a result of the household's eligibility under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), unless the Secretary determines that any household with income above 130 percent of the poverty guidelines is not eligible for the program.".

(c) Section 16(g)(4) of such Act (7 U.S.C. 2025(g)(4)) is amended by striking "State plans under the Aid to Families with Dependent Children Program under" and inserting "State programs funded under part A of".

(d) Section 17 of such Act (7 U.S.C. 2026) is amended—

(1) in the first sentence of subsection (b)(1)(A), by striking "to aid to families with dependent children under part A of title IV of the Social Security Act" and inserting "or are receiving assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)"; and

(2) in subsection (b)(3), by adding at the end the following new subparagraph:

"(I) The Secretary may not grant a waiver under this paragraph on or after October 1, 1995. Any reference in this paragraph to a provision of title IV of the Social Security Act shall be deemed to be a reference to such provision as in effect on September 30, 1995.";

(e) Section 20 of such Act (7 U.S.C. 2029) is amended—

(1) in subsection (a)(2)(B) by striking "operating—" and all that follows through "(ii) any other" and inserting "operating any"; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking "(b)(1) A household" and inserting "(b) A household"; and

(ii) in subparagraph (B), by striking "training program" and inserting "activity";

(B) by striking paragraph (2); and

(C) by redesignating subparagraphs (A) through (F) as paragraphs (1) through (6), respectively.

(f) Section 5(h)(1) of the Agriculture and Consumer Protection Act of 1973 (Public Law 93–186; 7 U.S.C. 612c note) is amended by striking "the program for aid to families with dependent children" and inserting "the State program funded".

(g) Section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended—

(1) in subsection (b)—

(A) in paragraph (2)(C)(ii)(II)—

(i) by striking "program for aid to families with dependent children" and inserting "State program funded"; and

(ii) by inserting before the period at the end the following: "that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995"; and

(B) in paragraph (6)—

(i) in subparagraph (A)(ii)—

(I) by striking "an AFDC assistance unit (under the aid to families with dependent children program authorized" and inserting "a family (under the State program funded"; and

(II) by striking ", in a State" and all that follows through "9902(2)))" and inserting "that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995"; and

(ii) in subparagraph (B), by striking "aid to families with dependent children" and inserting "assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995"; and

(2) in subsection (d)(2)(C)—

(A) by striking "program for aid to families with dependent children" and inserting "State program funded"; and

(B) by inserting before the period at the end the following: "that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995".

(h) Section 17(d)(2)(A)(ii)(II) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(A)(ii)(II)) is amended—

(1) by striking "program for aid to families with dependent children established" and inserting "State program funded"; and

(2) by inserting before the semicolon the following: "that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995".

SEC. 12105. CONFORMING AMENDMENTS TO OTHER LAWS.

(a) Subsection (b) of section 508 of the Unemployment Compensation Amendments of 1976 (42 U.S.C. 603a; Public Law 94–566; 90 Stat. 2689) is amended to read as follows:

"(b) PROVISION FOR REIMBURSEMENT OF EXPENSES.—For purposes of section 455 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information requested of such offices—

"(1) pursuant to the third sentence of section 3(a) of the Act entitled 'An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes', approved June 6, 1933 (29 U.S.C. 49b(a)), or

"(2) by a State or local agency charged with the duty of carrying a State plan for child support approved under part D of title IV of the Social Security Act,

shall be considered to constitute expenses incurred in the administration of such State plan.".

(b) Section 9121 of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 602 note) is repealed.

(c) Section 9122 of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 602 note) is repealed.

(d) Section 221 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 602 note), relating to treatment under AFDC of certain rental payments for federally assisted housing, is repealed.

(e) Section 159 of the Tax Equity and Fiscal Responsibility Act of 1982 (42 U.S.C. 602 note) is repealed.

(f) Section 202(d) of the Social Security Amendments of 1967 (81 Stat. 882; 42 U.S.C. 602 note) is repealed.

(g) Section 903 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 11381 note), relating to demonstration projects to reduce number of AFDC families in welfare hotels, is amended—

(1) in subsection (a), by striking "aid to families with dependent children under a State plan approved" and inserting "assistance under a State program funded"; and

(2) in subsection (c), by striking "aid to families with dependent children in the State under a State plan approved" and inserting "assistance in the State under a State program funded".

(h) The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 404C(c)(3) (20 U.S.C. 1070a–23(c)(3)), by striking "(Aid to Families with Dependent Children)"; and

(2) in section 480(b)(2) (20 U.S.C. 1087vv(b)(2)), by striking "aid to families with dependent children under a State plan ap-

proved" and inserting "assistance under a State program funded".

(i) The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) is amended—

(1) in section 231(d)(3)(A)(ii) (20 U.S.C. 2341(d)(3)(A)(ii)), by striking "the program for aid to dependent children" and inserting "the State program funded";

(2) in section 232(b)(2)(B) (20 U.S.C. 2341a(b)(2)(B)), by striking "the program for aid to families with dependent children" and inserting "the State program funded"; and

(3) in section 521(14)(B)(iii) (20 U.S.C. 2471(14)(B)(iii)), by striking "the program for aid to families with dependent children" and inserting "the State program funded".

(j) The Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.) is amended—

(1) in section 1113(a)(5) (20 U.S.C. 6313(a)(5)), by striking "Aid to Families with Dependent Children Program" and inserting "State program funded under part A of title IV of the Social Security Act";

(2) in section 1124(c)(5) (20 U.S.C. 6333(c)(5)), by striking "the program of aid to families with dependent children under a State plan approved under" and inserting "a State program funded under part A of"; and

(3) in section 5203(b)(2) (20 U.S.C. 7233(b)(2))—

(A) in subparagraph (A)(xi), by striking "Aid to Families with Dependent Children benefits" and inserting "assistance under a State program funded under part A of title IV of the Social Security Act"; and

(B) in subparagraph (B)(viii), by striking "Aid to Families with Dependent Children" and inserting "assistance under the State program funded under part A of title IV of the Social Security Act".

(k) Chapter VII of title I of Public Law 99–88 (25 U.S.C. 13d–1) is amended to read as follows: "Provided further, That general assistance payments made by the Bureau of Indian Affairs shall be made—

"(1) after April 29, 1985, and before October 1, 1995, on the basis of Aid to Families with Dependent Children (AFDC) standards of need; and

"(2) on and after October 1, 1995, on the basis of standards of need established under the State program funded under part A of title IV of the Social Security Act,

except that where a State ratably reduces its AFDC or State program payments, the Bureau shall reduce general assistance payments in such State by the same percentage as the State has reduced the AFDC or State program payment.".

(l) The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended—

(1) in section 51(d)(9) (26 U.S.C. 51(d)(9)), by striking all that follows "agency as" and inserting "being eligible for financial assistance under part A of title IV of the Social Security Act and as having continually received such financial assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer.";

(2) in section 3304(a)(16) (26 U.S.C. 3304(a)(16)), by striking "eligibility for aid or services," and all that follows through "children approved" and inserting "eligibility for assistance, or the amount of such assistance, under a State program funded";

(3) in section 6103(l)(7)(D)(i) (26 U.S.C. 6103(l)(7)(D)(i)), by striking "aid to families with dependent children provided under a State plan approved" and inserting "a State program funded";

(4) in section 6334(a)(11)(A) (26 U.S.C. 6334(a)(11)(A)), by striking "(relating to aid to families with dependent children)"; and

(5) in section 7523(b)(3)(C) (26 U.S.C. 7523(b)(3)(C)), by striking "aid to families with dependent children" and inserting "assistance under a State program funded under part A of title IV of the Social Security Act".

(m) Section 3(b) of the Wagner-Peyser Act (29 U.S.C. 49b(b)) is amended by striking "State plan approved under part A of title IV" and inserting "State program funded under part A of title IV".

(n) The Job Training Partnership Act (29 U.S.C. 1501 et seq.) is amended—

(1) in section 4(29)(A)(i) (29 U.S.C. 1503(29)(A)(i)), by striking "(42 U.S.C. 601 et seq.)";

(2) in section 106(b)(6)(C) (29 U.S.C. 1516(b)(6)(C)), by striking "State aid to families with dependent children records," and inserting "records collected under the State program funded under part A of title IV of the Social Security Act,";

(3) in section 121(b)(2) (29 U.S.C. 1531(b)(2))—

(A) by striking "the JOBS program" and inserting "the work activities required under title IV of the Social Security Act"; and

(B) by striking the second sentence;

(4) in section 123(c) (29 U.S.C. 1533(c))—

(A) in paragraph (1)(E), by repealing clause (vi); and

(B) in paragraph (2)(D), by repealing clause (v);

(5) in section 203(b)(3) (29 U.S.C. 1603(b)(3)), by striking ", including recipients under the JOBS program";

(6) in subparagraphs (A) and (B) of section 204(a)(1) (29 U.S.C. 1604(a)(1) (A) and (B)), by striking "(such as the JOBS program)" each place it appears;

(7) in section 205(a) (29 U.S.C. 1605(a)), by striking paragraph (4) and inserting the following:

"(4) the portions of title IV of the Social Security Act relating to work activities;";

(8) in section 253 (29 U.S.C. 1632)—

(A) in subsection (b)(2), by repealing subparagraph (C); and

(B) in paragraphs (1)(B) and (2)(B) of subsection (c), by striking "the JOBS program or" each place it appears;

(9) in section 264 (29 U.S.C. 1644)—

(A) in subparagraphs (A) and (B) of subsection (b)(1), by striking "(such as the JOBS program)" each place it appears; and

(B) in subparagraphs (A) and (B) of subsection (d)(3), by striking "and the JOBS program" each place it appears;

(10) in section 265(b) (29 U.S.C. 1645(b)), by striking paragraph (6) and inserting the following:

"(6) the portion of title IV of the Social Security Act relating to work activities;";

(11) in the second sentence of section 429(e) (29 U.S.C. 1699(e)), by striking "and shall be in an amount that does not exceed the maximum amount that may be provided by the State pursuant to section 402(g)(1)(C) of the Social Security Act (42 U.S.C. 602(g)(1)(C))";

(12) in section 454(c) (29 U.S.C. 1734(c)), by striking "JOBS and";

(13) in section 455(b) (29 U.S.C. 1735(b)), by striking "the JOBS program,";

(14) in section 501(1) (29 U.S.C. 1791(1)), by striking "aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)" and inserting "assistance under the State program funded under part A of title IV of the Social Security Act";

(15) in section 506(1)(A) (29 U.S.C. 1791e(1)(A)), by striking "aid to families with dependent children" and inserting "assistance under the State program funded";

(16) in section 508(a)(2)(A) (29 U.S.C. 1791g(a)(2)(A)), by striking "aid to families with dependent children" and inserting "assistance under the State program funded"; and

(17) in section 701(b)(2)(A) (29 U.S.C. 1792(b)(2)(A))—

(A) in clause (v), by striking the semicolon and inserting "; and"; and

(B) by striking clause (vi).

(o) Section 3803(c)(2)(C)(iv) of title 31, United States Code, is amended to read as follows:

"(iv) assistance under a State program funded under part A of title IV of the Social Security Act".

(p) Section 2605(b)(2)(A)(i) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(b)(2)(A)(i)) is amended to read as follows:

"(i) assistance under the State program funded under part A of title IV of the Social Security Act;".

(q) Section 303(f)(2) of the Family Support Act of 1988 (42 U.S.C. 602 note) is amended—

(1) by striking "(A)"; and

(2) by striking subparagraphs (B) and (C).

(r) The Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.) is amended—

(1) in the first section 255(h) (2 U.S.C. 905(h)), by striking "Aid to families with dependent children (75–0412–0–1–609);" and inserting "Block grants to States for temporary assistance for needy families;"; and

(2) in section 256 (2 U.S.C. 906)—

(A) by striking subsection (k); and

(B) by redesignating subsection (l) as subsection (k).

(s) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) in section 210(f) (8 U.S.C. 1160(f)), by striking "aid under a State plan approved under" each place it appears and inserting "assistance under a State program funded under";

(2) in section 245A(h) (8 U.S.C. 1255a(h))—

(A) in paragraph (1)(A)(i), by striking "program of aid to families with dependent children" and inserting "State program of assistance"; and

(B) in paragraph (2)(B), by striking "aid to families with dependent children" and inserting "assistance under a State program funded under part A of title IV of the Social Security Act"; and

(3) in section 412(e)(4) (8 U.S.C. 1522(e)(4)), by striking "State plan approved" and inserting "State program funded".

(t) Section 640(a)(4)(B)(i) of the Head Start Act (42 U.S.C. 9835(a)(4)(B)(i)) is amended by striking "program of aid to families with dependent children under a State plan approved" and inserting "State program of assistance funded".

(u) Section 9 of the Act of April 19, 1950 (64 Stat. 47, chapter 92; 25 U.S.C. 639) is repealed.

(v) Subparagraph (E) of section 213(d)(6) of the School-To-Work Opportunities Act of 1994 (20 U.S.C. 6143(d)(6)) is amended to read as follows:

"(E) part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) relating to work activities;".

SEC. 12106. EFFECTIVE DATE; TRANSITION RULE.

(a) IN GENERAL.—Except as otherwise provided in this subtitle, this subtitle and the amendments made by this subtitle shall take effect on October 1, 1995.

(b) PENALTIES.—

(1) IN GENERAL.—Paragraphs (2) through (7) and paragraph (9) of section 408(a) of the Social Security Act (as added by section 12101 of this Act) shall apply with respect to fiscal years beginning on or after October 1, 1996.

(2) MISUSE OF FUNDS.—Paragraphs (1) and (8) of section 408(a) of the Social Security Act (as added by section 12101 of this Act, shall apply with respect to fiscal years beginning on or after October 1, 1995.

(c) TRANSITION RULES.—

(1) STATE OPTION TO CONTINUE AFDC PROGRAM.—

(A) 9-MONTH EXTENSION.—A State may elect to continue the State AFDC program until June 30, 1996.

(B) NO INDIVIDUAL OR FAMILY ENTITLEMENT UNDER CONTINUED STATE AFDC PROGRAMS.—Notwithstanding any other provision of law or any rule of law, no individual or family is entitled to aid under any State AFDC program on or after the date of the enactment of this Act.

(C) LIMITATIONS ON FEDERAL OBLIGATIONS.—

(i) UNDER AFDC PROGRAM.—If a State elects to continue the State AFDC program pursuant to subparagraph (A), the total obligations of the Federal Government to the State under part A of title IV of the Social Security Act (as in effect on September 30, 1995) after the date of the enactment of this Act shall not exceed an amount equal to—

(I) the State family assistance grant (as defined in section 402(a)(1)(B) of the Social Security Act (as in effect pursuant to the amendment made by section 12101 of this Act)); minus

(II) any obligations of the Federal Government to the State under such part (as in effect on September 30, 1995) with respect to expenditures by the State during the period that begins on October 1, 1995, and ends on the day before the date of the enactment of this Act.

(ii) UNDER TEMPORARY FAMILY ASSISTANCE PROGRAM.—Notwithstanding section 402(a)(1) of the Social Security Act (as in effect pursuant to the amendment made by section 12101 of this Act), the total obligations of the Federal Government to the State under such section 402(a)(1) for fiscal year 1996 after the termination of the State AFDC program shall not exceed an amount equal to—

(I) the amount described in clause (i)(I) of this subparagraph; minus

(II) any obligations of the Federal Government to the State under part A of title IV of the Social Security Act (as in effect on September 30, 1995) with respect to expenditures by the State on or after October 1, 1995.

(D) SUBMISSION OF STATE PLAN FOR FISCAL YEAR 1996 DEEMED ACCEPTANCE OF GRANT LIMITATIONS AND FORMULA.—The submission of a plan by a State under section 401(a) of the Social Security Act (as in effect pursuant to the amendment made by section 12101 of this Act) for fiscal year 1996 is deemed to constitute the State's acceptance of the grant reductions under subparagraph (C)(ii) of this paragraph (including the formula for computing the amount of the reduction).

(E) STATE AFDC PROGRAM DEFINED.—As used in this paragraph, the term "State AFDC program" means the State program under parts A and F of title IV of the Social Security Act (as in effect on September 30, 1995).

(2) CLAIMS, ACTIONS, AND PROCEEDINGS.—The amendments made by this subtitle shall not apply with respect to—

(A) powers, duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before the effective date of this subtitle under the provisions amended; and

(B) administrative actions and proceedings commenced before such date, or authorized before such date to be commenced, under such provisions.

(3) CLOSING OUT ACCOUNT FOR THOSE PROGRAMS TERMINATED OR SUBSTANTIALLY MODIFIED BY THIS SUBTITLE.—In closing out accounts, Federal and State officials may use scientifically acceptable statistical sampling techniques. Claims made under programs which are repealed or substantially amended in this subtitle and which involve State expenditures in cases where assistance or services were provided during a

prior fiscal year, shall be treated as expenditures during fiscal year 1995 for purposes of reimbursement even if payment was made by a State on or after October 1, 1995. States shall complete the filing of all claims no later than September 30, 1997. Federal department heads shall—

(A) use the single audit procedure to review and resolve any claims in connection with the close out of programs, and

(B) reimburse States for any payments made for assistance or services provided during a prior fiscal year from funds for fiscal year 1995, rather than the funds authorized by this subtitle.

(4) CONTINUANCE IN OFFICE OF ASSISTANT SECRETARY FOR FAMILY SUPPORT.—The individual who, on the day before the effective date of this subtitle, is serving as Assistant Secretary for Family Support within the Department of Health and Human Services shall, until a successor is appointed to such position—

(A) continue to serve in such position; and

(B) except as otherwise provided by law—

(i) continue to perform the functions of the Assistant Secretary for Family Support under section 417 of the Social Security Act (as in effect before such effective date); and

(ii) have the powers and duties of the Assistant Secretary for Family Support under section 415 of the Social Security Act (as in effect pursuant to the amendment made by section 12101 of this Act).

(d) SUNSET.—The amendment made by section 12101 shall be effective only during the 6-year period beginning on October 1, 1995.

Subtitle B—Supplemental Security Income

SEC. 12200. REFERENCE TO SOCIAL SECURITY ACT.

Except as otherwise specifically provided, where ever in this subtitle 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 Social Security Act.

CHAPTER 1—ELIGIBILITY RESTRICTIONS

SEC. 12201. DENIAL OF SUPPLEMENTAL SECURITY INCOME BENEFITS BY REASON OF DISABILITY TO DRUG ADDICTS AND ALCOHOLICS.

(a) IN GENERAL.—Section 1614(a)(3) (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(I) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.".

(b) REPRESENTATIVE PAYEE REQUIREMENTS.—

(1) Section 1631(a)(2)(A)(ii)(II) (42 U.S.C. 1383(a)(2)(A)(ii)(II)) is amended to read as follows:

"(II) In the case of an individual eligible for benefits under this title by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition that prevents the individual from managing such benefits.".

(2) Section 1631(a)(2)(B)(vii) (42 U.S.C. 1383(a)(2)(B)(vii)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(3) Section 1631(a)(2)(B)(ix)(II) (42 U.S.C. 1383(a)(2)(B)(ix)(II)) is amended by striking all that follows "15 years, or" and inserting "described in subparagraph (A)(ii)(II)".

(4) Section 1631(a)(2)(D)(i)(II) (42 U.S.C. 1383(a)(2)(D)(i)(II)) is amended by striking "eligible for benefits" and all that follows through "is disabled" and inserting "described in subparagraph (A)(ii)(II)".

(c) TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION.—Title XVI (42 U.S.C. 1381 et seq.) is amended by adding at the end the following new section:

"TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

"SEC. 1636. In the case of any eligible individual whose benefits under this title by reason of disability are paid to a representative payee pursuant to section 1631(a)(2)(A)(ii)(II), the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).".

(d) CONFORMING AMENDMENTS.—

(1) Section 1611(e) (42 U.S.C. 1382(e)) is amended by striking paragraph (3).

(2) Section 1634 (42 U.S.C. 1383c) is amended by striking subsection (e).

(3) Section 201(c)(1) of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 425 note) is amended—

(A) by striking "to—" and all that follows through "in cases in which" and inserting "to individuals who are entitled to disability insurance benefits or child's, widow's, or widower's insurance benefits based on disability under title II of the Social Security Act, in cases in which";

(B) by striking "either subparagraph (A) or subparagraph (B)" and inserting "the preceding sentence"; and

(C) by striking "subparagraph (A) or (B)" and inserting "the preceding sentence".

(e) SUPPLEMENTAL FUNDING FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAMS.—

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are hereby appropriated to supplement State and Tribal programs funded under section 1933

of the Public Health Service Act (42 U.S.C. 300x–33), $50,000,000 for each of the fiscal years 1997 and 1998.

(2) ADDITIONAL FUNDS.—Amounts appropriated under paragraph (1) shall be in addition to any funds otherwise appropriated for allotments under section 1933 of the Public Health Service Act (42 U.S.C. 300x–33) and shall be allocated pursuant to such section 1933.

(3) USE OF FUNDS.—A State or Tribal government receiving an allotment under this subsection shall consider as priorities, for purposes of expending funds allotted under this subsection, activities relating to the treatment of the abuse of alcohol and other drugs.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to applicants for benefits for months beginning on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

(2) APPLICATION TO CURRENT RECIPIENTS.—

(A) APPLICATION AND NOTICE.—Notwithstanding any other provision of law, in the case of an individual who is receiving supplemental security income benefits under title XVI of the Social Security Act as of the date of the enactment of this Act and whose eligibility for such benefits would terminate by reason of the amendments made by this section, such amendments shall apply with respect to the benefits of such individual, including such individual's treatment (if any) provided pursuant to such title as in effect on the day before the date of such enactment, for months beginning on or after January 1, 1997, and the Commissioner of Social Security shall so notify the individual not later than 90 days after the date of the enactment of this Act.

(B) REAPPLICATION.—

(i) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, each individual notified pursuant to subparagraph (A) who desires to reapply for benefits under title XVI of the Social Security Act, as amended by this title, may reapply to the Commissioner of Social Security.

(ii) DETERMINATION OF ELIGIBILITY.—Not later than January 1, 1997, the Commissioner of Social Security shall complete the eligibility redetermination of each individual who reapplies for benefits under clause (i) pursuant to the procedures of title XVI of such Act.

(3) ADDITIONAL APPLICATION OF PAYEE REPRESENTATIVE AND TREATMENT REFERRAL REQUIREMENTS.—The amendments made by subsections (b) and (c) shall also apply—

(A) in the case of any individual who is receiving supplemental security income benefits under title XVI of the Social Security Act as of the date of the enactment of this Act, on and after the date of such individual's first continuing disability review occurring after such date of enactment, and

(B) in the case of any individual who receives supplemental security income benefits under title XVI of the Social Security Act and has attained age 65, in such manner as determined appropriate by the Commissioner of Social Security.

SEC. 12202. DENIAL OF SSI BENEFITS FOR 10 YEARS TO INDIVIDUALS FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN BENEFITS SIMULTANEOUSLY IN 2 OR MORE STATES.

(a) IN GENERAL.—Section 1614(a) (42 U.S.C. 1382c(a)) is amended by adding at the end the following new paragraph:

"(5) An individual shall not be considered an eligible individual for the purposes of this title during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under title IV, title XXI, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under this title.".

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

SEC. 12203. DENIAL OF SSI BENEFITS FOR FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS.

(a) IN GENERAL.—Section 1611(e) (42 U.S.C. 1382(e)), as amended by section 12201(d)(1), is amended by inserting after paragraph (2) the following new paragraph:

"(3) A person shall not be considered an eligible individual or eligible spouse for purposes of this title with respect to any month if during such month the person is—

"(A) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

"(B) violating a condition of probation or parole imposed under Federal or State law.".

(b) EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AGENCIES.—Section 1611(e) (42 U.S.C. 1382(e)), as amended by section 12201(d)(1) and subsection (a), is amended by inserting after paragraph (3) the following new paragraph:

"(4) Notwithstanding any other provision of law, the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the request of the officer, with the current address, Social Security number, and photograph (if applicable) of any recipient of benefits under this title, if the officer furnishes the Commissioner with the name of the recipient and notifies the Commissioner that—

"(A) the recipient—

"(i) is described in subparagraph (A) or (B) of paragraph (3); or

"(ii) has information that is necessary for the officer to conduct the officer's official duties; and

"(B) the location or apprehension of the recipient is within the officer's official duties.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

CHAPTER 2—BENEFITS FOR DISABLED CHILDREN

SEC. 12211. DEFINITION AND ELIGIBILITY RULES.

(a) DEFINITION OF CHILDHOOD DISABILITY.—Section 1614(a)(3) (42 U.S.C. 1382c(a)(3)), as amended by section 7251(a), is amended—

(1) in subparagraph (A), by striking "An individual" and inserting "Except as provided in subparagraph (C), an individual";

(2) in subparagraph (A), by striking "(or, in the case of an individual under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity)";

(3) by redesignating subparagraphs (C) through (I) as subparagraphs (D) through (J), respectively;

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) An individual under the age of 18 shall be considered disabled for the purposes of this title if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. Notwithstanding the preceding sentence, no individual under the age of 18 who engages in substantial gainful activity (determined in accordance with regulations prescribed pursuant to subparagraph (E)) may be considered to be disabled."; and

(5) in subparagraph (F), as redesignated by paragraph (3), by striking "(D)" and inserting "(E)".

(b) CHANGES TO CHILDHOOD SSI REGULATIONS.—

(1) MODIFICATION TO MEDICAL CRITERIA FOR EVALUATION OF MENTAL AND EMOTIONAL DISORDERS.—The Commissioner of Social Security shall modify sections 112.00C.2. and 112.02B.2.c.(2) of appendix 1 to subpart P of part 404 of title 20, Code of Federal Regulations, to eliminate references to maladaptive behavior in the domain of personal/behavorial function.

(2) DISCONTINUANCE OF INDIVIDUALIZED FUNCTIONAL ASSESSMENT.—The Commissioner of Social Security shall discontinue the individualized functional assessment for children set forth in sections 416.924d and 416.924e of title 20, Code of Federal Regulations.

(c) MEDICAL IMPROVEMENT REVIEW STANDARD AS IT APPLIES TO INDIVIDUALS UNDER THE AGE OF 18.—Section 1614(a)(4) (42 U.S.C. 1382(a)(4)) is amended—

(1) by redesignating subclauses (I) and (II) of clauses (i) and (ii) of subparagraph (B) as subclauses (aa) and (bb), respectively;

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

(3) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and by moving their left hand margin 2 ems to the right;

(4) by inserting before clause (i) (as redesignated by paragraph (3)) the following:

"(A) in the case of an individual who is age 18 or older—";

(5) at the end of subparagraph (A)(iii) (as redesignated by paragraphs (3) and (4)), by striking the period and inserting "; or";

(6) by inserting after and below subparagraph (A)(iii) (as so redesignated) the following:

"(B) in the case of an individual who is under the age of 18—

"(i) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments, and that such impairment or combination of impairments no longer results in marked and severe functional limitations; or

"(ii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments, is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and such impairment or combination of impairments does not result in marked or severe functional limitations; or";

(7) by redesignating subparagraph (D) as subparagraph (C) and by inserting in such subparagraph "in the case of any individual," before "substantial evidence"; and

(8) in the first sentence following subparagraph (C) (as redesignated by paragraph (7)), by—

(A) inserting "(i)" before "to restore"; and

(B) inserting ", or (ii) in the case of an individual under the age of 18, to eliminate or improve the individual's impairment or combination of impairments so that it no longer results in marked and severe functional limitations" immediately before the period.

(d) AMOUNT OF BENEFITS.—Section 1611(b) (42 U.S.C. 1382(b)) is amended by adding at the end the following new paragraph:

"(3)(i) Except with respect to individuals described in clause (ii), the benefit under this title for an individual described in section 1614(a)(3)(C) shall be payable at a rate equal to 75 percent of the rate otherwise determined under this subsection.

"(ii) An individual is described in this clause if such individual is described in section 1614(a)(3)(C), and—

"(I) in the case of such an individual under the age of 6, such individual has a medical impairment that severely limits the individual's ability to function in a manner appropriate to individuals of the same age and who without special personal assistance would require specialized care outside the home; or

"(II) in the case of such an individual who has attained the age of 6, such individual requires personal care assistance with—

"(aa) at least 2 activities of daily living;

"(bb) continual 24-hour supervision or monitoring to avoid causing injury or harm to self or others; or

"(cc) the administration of medical treatment; and

who without such assistance would require full-time or part-time specialized care outside the home.

"(iii)(I) For purposes of clause (ii), the term 'specialized care' means medical care beyond routine administration of medication.

"(II) For purposes of clause (ii)(II)—

"(aa) the term 'personal care assistance' means at least hands-on and stand-by assistance, supervision, or cueing; and

"(bb) the term 'activities of daily living' means eating, toileting, dressing, bathing, and mobility.".

(e) EFFECTIVE DATES, ETC.—

(1) EFFECTIVE DATES.—

(A) IN GENERAL.—The provisions of, and amendments made by, subsections (a), (b), and (c) shall apply to applicants for benefits under title XVI of the Social Security Act for months beginning on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such provisions and amendments.

(B) ELIGIBILITY RULES.—The amendments made by subsection (d) shall apply to—

(i) applicants for benefits under title XVI of the Social Security Act for months beginning on or after January 1, 1997; and

(ii) with respect to continuing disability reviews of eligibility for benefits under such title occurring on or after such date.

(2) APPLICATION TO CURRENT RECIPIENTS.—

(A) ELIGIBILITY DETERMINATIONS.—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Social Security shall redetermine the eligibility of any individual under age 18 who is receiving supplemental security income benefits based on a disability under title XVI of the Social Security Act as of the date of the enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of, and amendments made by, subsections (a), (b), and (c). With respect to any redetermination under this subparagraph—

(i) section 1614(a)(4) of the Social Security Act (42 U.S.C. 1382c(a)(4)) shall not apply;

(ii) the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under title XVI of such Act;

(iii) the Commissioner shall give such redetermination priority over all continuing eligibility reviews and other reviews under such title; and

(iv) such redetermination shall be counted as a review or redetermination otherwise required to be made under section 208 of the Social Security Independence

and Program Improvements Act of 1994 or any other provision of title XVI of the Social Security Act.

(B) GRANDFATHER PROVISION.—The provisions of, and amendments made by, subsections (a), (b), and (c), and the redetermination under subparagraph (A), shall only apply with respect to the benefits of an individual described in subparagraph (A) for months beginning on or after January 1, 1997.

(C) NOTICE.—Not later than 90 days after the date of the enactment of this Act, the Commissioner of Social Security shall notify an individual described in subparagraph (A) of the provisions of this paragraph.

(3) REGULATIONS.—The Commissioner of Social Security shall submit for review to the committees of jurisdiction in the Congress any final regulation pertaining to the eligibility of individuals under age 18 for benefits under title XVI of the Social Security Act at least 45 days before the effective date of such regulation. The submission under this paragraph shall include supporting documentation providing a cost analysis, workload impact, and projections as to how the regulation will effect the future number of recipients under such title.

(4) APPROPRIATIONS.—

(A) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are authorized to be appropriated and are hereby appropriated, to remain available without fiscal year limitation, $200,000,000 for fiscal year 1996, $75,000,000 for fiscal year 1997, and $25,000,000 for fiscal year 1998, for the Commissioner of Social Security to utilize only for continuing disability reviews and redeterminations under title XVI of the Social Security Act, with reviews and redeterminations for individuals affected by the provisions of subsection (b) given highest priority.

(B) ADDITIONAL FUNDS.—Amounts appropriated under subparagraph (A) shall be in addition to any funds otherwise appropriated for continuing disability reviews and redeterminations under title XVI of the Social Security Act.

SEC. 12212. ELIGIBILITY REDETERMINATIONS AND CONTINUING DISABILITY REVIEWS.

(a) CONTINUING DISABILITY REVIEWS RELATING TO CERTAIN CHILDREN.—Section 1614(a)(3)(H) (42 U.S.C. 1382c(a)(3)(H)), as redesignated by section 12211(a)(3), is amended—

(1) by inserting "(i)" after "(H)"; and

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

"(ii)(I) Not less frequently than once every 3 years, the Commissioner shall review in accordance with paragraph (4) the continued eligibility for benefits under this title of each individual who has not attained 18 years of age and is eligible for such benefits by reason of an impairment (or combination of impairments) which may improve (or, at the option of the Commissioner, which is unlikely to improve).

"(II) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment,

to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this title.

"(III) If the representative payee refuses to comply without good cause with the requirements of subclause (II), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly terminate payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this title would be served thereby, to the individual.

"(IV) Subclause (II) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1631(c) shall not apply to a finding by the Commissioner that the requirements of subclause (II) should not apply to an individual's representative payee.".

(b) DISABILITY ELIGIBILITY REDETERMINATIONS REQUIRED FOR SSI RECIPIENTS WHO ATTAIN 18 YEARS OF AGE.—

(1) IN GENERAL.—Section 1614(a)(3)(H) (42 U.S.C. 1382c(a)(3)(H)), as amended by subsection (a), is amended by adding at the end the following new clause:

"(iii) If an individual is eligible for benefits under this title by reason of disability for the month preceding the month in which the individual attains the age of 18 years, the Commissioner shall redetermine such eligibility—

"(I) during the 1-year period beginning on the individual's 18th birthday; and

"(II) by applying the criteria used in determining the initial eligibility for applicants who are age 18 or older.

With respect to a redetermination under this clause, paragraph (4) shall not apply and such redetermination shall be considered a substitute for a review or redetermination otherwise required under any other provision of this subparagraph during that 1-year period.".

(2) CONFORMING REPEAL.—Section 207 of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 1382 note; 108 Stat. 1516) is hereby repealed.

(c) CONTINUING DISABILITY REVIEW REQUIRED FOR LOW BIRTH WEIGHT BABIES.—Section 1614(a)(3)(H) (42 U.S.C. 1382c(a)(3)(H)), as amended by subsections (a) and (b), is amended by adding at the end the following new clause:

"(iv)(I) Not later than 12 months after the birth of an individual, the Commissioner shall review in accordance with paragraph (4) the continuing eligibility for benefits under this title by reason of disability of such individual whose low birth weight is a contributing factor material to the Commissioner's determination that the individual is disabled.

"(II) A review under subclause (I) shall be considered a substitute for a review otherwise required under any other provision of this subparagraph during that 12-month period.

"(III) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving

treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this title.

"(IV) If the representative payee refuses to comply without good cause with the requirements of subclause (III), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly terminate payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this title would be served thereby, to the individual.

"(V) Subclause (III) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1631(c) shall not apply to a finding by the Commissioner that the requirements of subclause (III) should not apply to an individual's representative payee.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits for months beginning on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

SEC. 12213. ADDITIONAL ACCOUNTABILITY REQUIREMENTS.

(a) DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE.—

(1) IN GENERAL.—Section 1613(c) (42 U.S.C. 1382b(c)) is amended to read as follows:

"(c) DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE.—(1)(A)(i) If an individual who has not attained 18 years of age (or any person acting on such individual's behalf) disposes of resources of the individual for less than fair market value on or after the look-back date specified in clause (ii)(I), the individual is ineligible for benefits under this title for months during the period beginning on the date specified in clause (iii) and equal to the number of months specified in clause (iv).

"(ii)(I) The look-back date specified in this subclause is a date that is 36 months before the date specified in subclause (II).

"(II) The date specified in this subclause is the date on which the individual applies for benefits under this title or, if later, the date on which the disposal of the individual's resources for less than fair market value occurs.

"(iii) The date specified in this clause is the first day of the first month that follows the month in which the individual's resources were disposed of for less than fair market value and that does not occur in any other period of ineligibility under this paragraph.

"(iv) The number of months of ineligibility under this clause for an individual shall be equal to—

"(I) the total, cumulative uncompensated value of all the individual's resources so disposed of on or after the look-back date specified in clause (ii)(I), divided by

"(II) the amount of the maximum monthly benefit payable under section 1611(b) to an eligible individual for the month in which the date specified in clause (ii)(II) occurs.

"(B) An individual shall not be ineligible for benefits under this title by reason of subparagraph (A) if the Commissioner determines that—

"(i) the individual intended to dispose of the resources at fair market value;

"(ii) the resources were transferred exclusively for a purpose other than to qualify for benefits under this title;

"(iii) all resources transferred for less than fair market value have been returned to the individual; or

"(iv) the denial of eligibility would work an undue hardship on the individual (as determined on the basis of criteria established by the Commissioner in regulations).

"(C) For purposes of this paragraph, in the case of a resource held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the resource (or the affected portion of such resource) shall be considered to be disposed of by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such resource.

"(D)(i) Notwithstanding subparagraph (A), this subsection shall not apply to a transfer of a resource to a trust if the portion of the trust attributable to such resource is considered a resource available to the individual pursuant to subsection (e)(3) (or would be so considered, but for the application of subsection (e)(4)).

"(ii) In the case of a trust established by an individual (within the meaning of paragraph (2)(A) of subsection (e)), if from such portion of the trust (if any) that is considered a resource available to the individual pursuant to paragraph (3) of such subsection (or would be so considered but for the application of paragraph (2) of such subsection) or the residue of such portion upon the termination of the trust—

"(I) there is made a payment other than to or for the benefit of the individual, or

"(II) no payment could under any circumstance be made to the individual,

then the payment described in subclause (I) or the foreclosure of payment described in subclause (II) shall be considered a disposal of resources by the individual subject to this subsection, as of the date of such payment or foreclosure, respectively.

"(2)(A) At the time an individual (and the individual's eligible spouse, if any) applies for benefits under this title, and at the time the eligibility of an individual (and such spouse, if any) for such benefits is redetermined, the Commissioner of Social Security shall—

"(i) inform such individual of the provisions of paragraph (1) providing for a period of ineligibility for benefits under this title for individuals who make certain dispositions of resources for less than fair market value, and inform such individual that information obtained pursuant to clause (ii) will be made available to the State agency administering a State plan under title XXI (as provided in subparagraph (B)); and

"(ii) obtain from such individual information which may be used in determining whether or not a period of ineligibility for such benefits would be required by reason of paragraph (1).

"(B) The Commissioner of Social Security shall make the information obtained under subparagraph (A)(ii) available, on request, to any State agency administering a State plan approved under title XXI.

"(3) For purposes of this subsection—

"(A) the term 'trust' includes any legal instrument or device that is similar to a trust; and

"(B) the term 'benefits under this title' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a), and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall be effective with respect to transfers of resources for less than fair market value that occur at least 90 days after the date of the enactment of this Act.

(b) TREATMENT OF ASSETS HELD IN TRUST.—

(1) TREATMENT AS RESOURCE.—Section 1613 (42 U.S.C. 1382) is amended by adding at the end the following new subsection:

"TRUSTS

"(e)(1) In determining the resources of an individual who has not attained 18 years of age, the provisions of paragraph (3) shall apply to a trust established by such individual.

"(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual were transferred to the trust.

"(B) In the case of an irrevocable trust to which the assets of an individual and the assets of any other person or persons were transferred, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

"(C) This subsection shall apply without regard to—

"(i) the purposes for which the trust is established;

"(ii) whether the trustees have or exercise any discretion under the trust;

"(iii) any restrictions on when or whether distributions may be made from the trust; or

"(iv) any restrictions on the use of distributions from the trust.

"(3)(A) In the case of a revocable trust, the corpus of the trust shall be considered a resource available to the individual.

"(B) In the case of an irrevocable trust, if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which payment to or for the benefit of the individual could be made shall be considered a resource available to the individual.

"(4) The Commissioner may waive the application of this subsection with respect to any individual if the Commissioner determines, on the basis of criteria prescribed in regulations, that such application would work an undue hardship on such individual.

"(5) For purposes of this subsection—

"(A) the term 'trust' includes any legal instrument or device that is similar to a trust;

"(B) the term 'corpus' means all property and other interests held by the trust, including accumulated earnings and any other addition to such trust after its establishment (except that such term does not include any such earnings or addition in the month in which such earnings or addition is credited or otherwise transferred to the trust);

"(C) the term 'asset' includes any income or resource of the individual, including—

"(i) any income otherwise excluded by section 1612(b);

"(ii) any resource otherwise excluded by this section; and

"(iii) any other payment or property that the individual is entitled to but does not receive or have access to because of action by—

"(I) such individual;

"(II) a person or entity (including a court) with legal authority to act in place of, or on behalf of, such individual; or

"(III) a person or entity (including a court) acting at the direction of, or upon the request of, such individual; and

"(D) the term 'benefits under this title' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a), and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.".

(2) TREATMENT AS INCOME.—Section 1612(a)(2) (42 U.S.C. 1382a(a)(2)) is amended—

(A) by striking "and" at the end of subparagraph (E);

(B) by striking the period at the end of subparagraph (F) and inserting "; and"; and

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

"(G) any earnings of, and additions to, the corpus of a trust (as defined in section 1613(f)) established by an individual (within the meaning of paragraph (2)(A) of section 1613(e)) and of which such individual is a beneficiary (other than a trust to which paragraph (4) of such section applies); except that in the case of an irrevocable trust, there shall exist circumstances under which payment from such earnings or additions could be made to, or for the benefit of, such individual.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on January 1, 1996, and shall apply to trusts established on or after such date.

(c) REQUIREMENT TO ESTABLISH ACCOUNT.—

(1) IN GENERAL.—Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended—

(A) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(B) by inserting after subparagraph (E) the following new subparagraph:

"(F)(i)(I) Each representative payee of an eligible individual under the age of 18 who is eligible for the payment of benefits de-

scribed in subclause (II) shall establish on behalf of such individual an account in a financial institution into which such benefits shall be paid, and shall thereafter maintain such account for use in accordance with clause (ii).

"(II) Benefits described in this subclause are past-due monthly benefits under this title (which, for purposes of this subclause, include State supplementary payments made by the Commissioner pursuant to an agreement under section 1616 or section 212(b) of Public Law 93–66) in an amount (after any withholding by the Commissioner for reimbursement to a State for interim assistance under subsection (g)) that exceeds the product of—

"(aa) 6, and

"(bb) the maximum monthly benefit payable under this title to an eligible individual.

"(ii)(I) A representative payee may use funds in the account established under clause (i) to pay for allowable expenses described in subclause (II).

"(II) An allowable expense described in this subclause is an expense for—

"(aa) education or job skills training;

"(bb) personal needs assistance;

"(cc) special equipment;

"(dd) housing modification;

"(ee) medical treatment;

"(ff) therapy or rehabilitation; or

"(gg) any other item or service that the Commissioner determines to be appropriate;

provided that such expense benefits such individual and, in the case of an expense described in division (cc), (dd), (ff), or (gg), is related to the impairment (or combination of impairments) of such individual.

"(III) The use of funds from an account established under clause (i) in any manner not authorized by this clause—

"(aa) by a representative payee shall constitute misuse of benefits for all purposes of this paragraph, and any representative payee who knowingly misuses benefits from such an account shall be liable to the Commissioner in an amount equal to the total amount of such misused benefits; and

"(bb) by an eligible individual who is his or her own representative payee shall be considered an overpayment subject to recovery under subsection (b).

"(IV) This clause shall continue to apply to funds in the account after the child has reached age 18, regardless of whether benefits are paid directly to the beneficiary or through a representative payee.

"(iii) The representative payee may deposit into the account established pursuant to clause (i)—

"(I) past-due benefits payable to the eligible individual in an amount less than that specified in clause (i)(II), and

"(II) any other funds representing an underpayment under this title to such individual, provided that the amount of such underpayment is equal to or exceeds the maximum monthly benefit payable under this title to an eligible individual.

"(iv) The Commissioner of Social Security shall establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account established pursuant to clause (i).".

(2) EXCLUSION FROM RESOURCES.—Section 1613(a) (42 U.S.C. 1382b(a)) is amended—

(A) in paragraph (9), by striking "; and" and inserting a semicolon;

(B) in the first paragraph (10), by striking the period and inserting a semicolon;

(C) by redesignating the second paragraph (10) as paragraph (11), and by striking the period and inserting "; and"; and

(D) by adding at the end the following:

"(12) the assets and accrued interest or other earnings of any account established and maintained in accordance with section 1631(a)(2)(F).".

(3) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(A) by striking "and" at the end of paragraph (19);

(B) by striking the period at the end of paragraph (20) and inserting "; and"; and

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

"(21) the interest or other earnings on any account established and maintained in accordance with section 1631(a)(2)(F).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments made after the date of the enactment of this Act.

SEC. 12214. REDUCTION IN CASH BENEFITS PAYABLE TO INSTITUTIONALIZED INDIVIDUALS WHOSE MEDICAL COSTS ARE COVERED BY PRIVATE INSURANCE.

(a) IN GENERAL.—Section 1611(e)(1)(B) (42 U.S.C. 1382(e)(1)(B)) is amended—

(1) by striking "title XIX, or" and inserting "title XIX,"; and

(2) by inserting "or, in the case of an eligible individual under the age of 18 receiving payments (with respect to such individual) under any health insurance policy issued by a private provider of such insurance" after "section 1614(f)(2)(B),".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to benefits for months beginning 90 or more days after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

SEC. 12215. REGULATIONS.

Within 3 months after the date of the enactment of this Act, the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by sections 12211, 12212, 12213, and 12214.

Subtitle C—Child Support

SEC. 12300. REFERENCE TO SOCIAL SECURITY ACT.

Except as otherwise specifically provided, where ever in this subtitle 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 Social Security Act.

CHAPTER 1—ELIGIBILITY FOR SERVICES; DISTRIBUTION OF PAYMENTS

SEC. 12301. STATE OBLIGATION TO PROVIDE CHILD SUPPORT ENFORCEMENT SERVICES.

(a) STATE PLAN REQUIREMENTS.—Section 454 (42 U.S.C. 654) is amended—

(1) by striking paragraph (4) and inserting the following new paragraph:

"(4) provide that the State will—

"(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

"(i) each child for whom (I) assistance is provided under the State program funded under part A of this title, (II) benefits or services for foster care maintenance and adoption assistance are provided under the State program funded under part B of this title, or (III) medical assistance is provided under the State plan approved under title XXI, unless the State agency administering the plan determines (in accordance with paragraph (29)) that it is against the best interests of the child to do so; and

"(ii) any other child, if an individual applies for such services with respect to the child; and

"(B) enforce any support obligation established with respect to—

"(i) a child with respect to whom the State provides services under the plan; or

"(ii) the custodial parent of such a child."; and

(2) in paragraph (6)—

(A) by striking "provide that" and inserting "provide that—";

(B) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan;";

(C) in subparagraph (B), by inserting "on individuals not receiving assistance under any State program funded under part A" after "such services shall be imposed";

(D) in each of subparagraphs (B), (C), (D), and (E)—

(i) by indenting the subparagraph in the same manner as, and aligning the left margin of the sub-

paragraph with the left margin of, the matter inserted by subparagraph (B) of this paragraph; and

(ii) by striking the final comma and inserting a semicolon; and

(E) in subparagraph (E), by indenting each of clauses (i) and (ii) 2 additional ems.

(b) CONTINUATION OF SERVICES FOR FAMILIES CEASING TO RECEIVE ASSISTANCE UNDER THE STATE PROGRAM FUNDED UNDER PART A.—Section 454 (42 U.S.C. 654) is amended—

(1) by striking "and" at the end of paragraph (23);

(2) by striking the period at the end of paragraph (24) and inserting "; and"; and

(3) by adding after paragraph (24) the following new paragraph:

"(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family.".

(c) CONFORMING AMENDMENTS.—

(1) Section 452(b) (42 U.S.C. 652(b)) is amended by striking "454(6)" and inserting "454(4)".

(2) Section 452(g)(2)(A) (42 U.S.C. 652(g)(2)(A)) is amended by striking "454(6)" each place it appears and inserting "454(4)(A)(ii)".

(3) Section 466(a)(3)(B) (42 U.S.C. 666(a)(3)(B)) is amended by striking "in the case of overdue support which a State has agreed to collect under section 454(6)" and inserting "in any other case".

(4) Section 466(e) (42 U.S.C. 666(e)) is amended by striking "paragraph (4) or (6) of section 454" and inserting "section 454(4)".

SEC. 12302. DISTRIBUTION OF CHILD SUPPORT COLLECTIONS.

(a) IN GENERAL.—Section 457 (42 U.S.C. 657) is amended to read as follows:

"SEC. 457. DISTRIBUTION OF COLLECTED SUPPORT.

"(a) IN GENERAL.—An amount collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

"(1) FAMILIES RECEIVING ASSISTANCE.—In the case of a family receiving assistance from the State, the State shall—

"(A) retain, or distribute to the family, the State share of the amount so collected; and

"(B) pay to the Federal Government the Federal share of the amount so collected.

"(2) FAMILIES THAT FORMERLY RECEIVED ASSISTANCE.—In the case of a family that formerly received assistance from the State:

"(A) CURRENT SUPPORT PAYMENTS.—To the extent that the amount so collected does not exceed the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected to the family.

"(B) PAYMENTS OF ARREARAGES.—To the extent that the amount so collected exceeds the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected as follows:

"(i) DISTRIBUTION OF ARREARAGES THAT ACCRUED AFTER THE FAMILY CEASED TO RECEIVE ASSISTANCE.—

"(I) PRE-OCTOBER 1997.—The provisions of this section (other than subsection (b)(1)) as in effect on the day before the date of the enactment of section 12302 of the Personal Responsibility and Work Opportunity Act of 1995 shall apply with respect to the distribution of support arrearages that—

"(aa) accrued after the family ceased to receive assistance, and

"(bb) are collected before October 1, 1997.

"(II) POST-SEPTEMBER 1997.—With respect to amounts collected on or after October 1, 1997—

"(aa) IN GENERAL.—The State shall distribute any amount collected (other than amounts described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued after the family ceased to receive assistance from the State.

"(bb) REIMBURSEMENT OF GOVERNMENTS FOR ASSISTANCE PROVIDED TO THE FAMILY.—To the extent that division (aa) does not apply to the amount, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2)(A)) of the amount so collected, to the extent necessary to reimburse amounts paid to the family as assistance by the State.

"(cc) DISTRIBUTION OF THE REMAINDER TO THE FAMILY.—To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

"(ii) DISTRIBUTION OF ARREARAGES THAT ACCRUED BEFORE THE FAMILY RECEIVED ASSISTANCE.—

"(I) PRE-OCTOBER 2000.—The provisions of this section (other than subsection (b)(1)) as in effect on the day before the date of the enactment of section 12302 of the Personal Responsibility and Work Opportunity Act of 1995 shall apply with respect to the distribution of support arrearages that—

"(aa) accrued before the family received assistance, and

"(bb) are collected before October 1, 2000.

"(II) POST-SEPTEMBER 2000.—Unless based on the report required by paragraph (4), the Congress determines otherwise, with respect to amounts collected on or after October 1, 2000—

"(aa) IN GENERAL.—The State shall first distribute any amount collected (other than amounts described in clause (iv)) to the family to the extent necessary to satisfy any support arrears with respect to the family that accrued before the family received assistance from the State .

"(bb) REIMBURSEMENT OF GOVERNMENTS FOR ASSISTANCE PROVIDED TO THE FAMILY.—The State shall retain the State share of the amounts so collected in excess of those distributed pursuant to division (aa) and pay to the Federal Government the Federal share (as defined in subsection (c)(2)) of the amount so collected, to the extent necessary to reimburse all or part of the amounts paid to the family as assistance by the State.

"(cc) DISTRIBUTION OF THE REMAINDER TO THE FAMILY.—To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

"(iii) DISTRIBUTION OF ARREARAGES THAT ACCRUED WHILE THE FAMILY RECEIVED ASSISTANCE.—In the case of a family described in this subparagraph, the provisions of paragraph (1) shall apply with respect to the distribution of support arrearages that accrued while the family received assistance.

"(iv) AMOUNTS COLLECTED PURSUANT TO SECTION 464.—Notwithstanding any other provision of this section, any amount of support collected pursuant to section 464 shall be retained by the State to the extent necessary to reimburse amounts paid to the family as assistance by the State. The State shall pay to the Federal Government the Federal share of the amounts so retained. To the extent the amount collected pursuant to section 464 exceeds the amount so retained, the State shall distribute the excess to the family.

"(v) ORDERING RULES FOR DISTRIBUTIONS.—For purposes of this subparagraph, the State shall treat any support arrearages collected as accruing in the following order:

"(I) to the period after the family ceased to receive assistance;

"(II) to the period before the family received assistance; and

"(III) to the period while the family was receiving assistance.

"(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute the amount so collected to the family.

"(4) STUDY AND REPORT.—Not later than October 1, 1998, the Secretary shall report to the Congress the Secretary's findings with respect to—

"(A) whether the distribution of post-assistance arrearages to families has been effective in moving people off of welfare and keeping them off of welfare;

"(B) whether early implementation of a pre-assistance arrearage program by some states has been effective in moving people off of welfare and keeping them off of welfare;

"(C) what the overall impact has been of the amendments made by the Personal Responsibility and Work Opportunity Act of 1995 with respect to child support enforcement in moving people off of welfare and keeping them off of welfare; and

"(D) based on the information and data the Secretary has obtained, what changes, if any, should be made in the policies related to the distribution of child support arrearages.

"(b) CONTINUATION OF ASSIGNMENTS.—Any rights to support obligations, which were assigned to a State as a condition of receiving assistance from the State under part A and which were in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995, shall remain assigned after such date.

"(c) DEFINITIONS.—As used in subsection (a):

"(1) ASSISTANCE.—The term 'assistance from the State' means—

"(A) assistance under the State program funded under part A or under the State plan approved under part A of this title (as in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995); or

"(B) benefits under the State plan approved under part E of this title (as in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995).

"(2) FEDERAL SHARE.—The term 'Federal share' means—

"(A) if the amounts collected and retained by the State (to the extent necessary to reimburse amounts paid to families as assistance by the State) are equal to or greater than such amounts collected in fiscal year 1995 (reduced by amounts not retained by the State in fiscal year 1995 as a result of the application of subsection (b)(1) of this section as in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995), the highest Federal medical assistance percentage in effect for the State in fiscal year 1995 or any succeeding year of the amount so collected; or

"(B) if the amounts so collected and retained by the State are less than such amounts collected in fiscal year

1995 (reduced by amounts not retained by the State in fiscal year 1995 as a result of the application of subsection (b)(1) of this section as in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995), the amounts so collected and retained less the State share in fiscal year 1995.

"(3) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—The term 'Federal medical assistance percentage' means—

"(A) the Federal medical assistance percentage (as defined in section 1118), in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa; or

"(B) the Federal medical assistance percentage (as defined in section 2122(c)) in the case of any other State.

"(4) STATE SHARE.—The term 'State share' means 100 percent minus the Federal share.

"(d) CONTINUATION OF SERVICES FOR FAMILIES CEASING TO RECEIVE ASSISTANCE UNDER THE STATE PROGRAM FUNDED UNDER PART A.—When a family with respect to which services are provided under a State plan approved under this part ceases to receive assistance under the State program funded under part A, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of individuals to whom services are furnished under section 454, except that an application or other request to continue services shall not be required of such a family and section 454(6)(B) shall not apply to the family.".

(b) CONFORMING AMENDMENT.—Section 464(a)(1) (42 U.S.C. 664(a)(1)) is amended by striking "section 457(b)(4) or (d)(3)" and inserting "section 457".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on October 1, 1996, or earlier at the State's option.

SEC. 12303. PRIVACY SAFEGUARDS.

(a) STATE PLAN REQUIREMENT.—Section 454 (42 U.S.C. 654), as amended by section 12301(b) of this Act, is amended—

(1) by striking "and" at the end of paragraph (24);

(2) by striking the period at the end of paragraph (25) and inserting "; and"; and

(3) by adding after paragraph (25) the following new paragraph:

"(26) will have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including—

"(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish or enforce support;

"(B) prohibitions against the release of information on the whereabouts of 1 party to another party against whom a protective order with respect to the former party has been entered; and

"(C) prohibitions against the release of information on the whereabouts of 1 party to another party if the State has reason to believe that the release of the information may result in physical or emotional harm to the former party.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on October 1, 1997.

CHAPTER 2—LOCATE AND CASE TRACKING

SEC. 12311. STATE CASE REGISTRY.

Section 454A, as added by section 12344(a)(2) of this Act, is amended by adding at the end the following new subsections:

"(e) STATE CASE REGISTRY.—

"(1) CONTENTS.—The automated system required by this section shall include a registry (which shall be known as the 'State case registry') that contains records with respect to—

"(A) each case in which services are being provided by the State agency under the State plan approved under this part; and

"(B) each support order established or modified in the State on or after October 1, 1998.

"(2) LINKING OF LOCAL REGISTRIES.—The State case registry may be established by linking local case registries of support orders through an automated information network, subject to this section.

"(3) USE OF STANDARDIZED DATA ELEMENTS.—Such records shall use standardized data elements for both parents (such as names, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers), and contain such other information (such as on-case status) as the Secretary may require.

"(4) PAYMENT RECORDS.—Each case record in the State case registry with respect to which services are being provided under the State plan approved under this part and with respect to which a support order has been established shall include a record of—

"(A) the amount of monthly (or other periodic) support owed under the order, and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order;

"(B) any amount described in subparagraph (A) that has been collected;

"(C) the distribution of such collected amounts;

"(D) the birth date of any child for whom the order requires the provision of support; and

"(E) the amount of any lien imposed with respect to the order pursuant to section 466(a)(4).

"(5) UPDATING AND MONITORING.—The State agency operating the automated system required by this section shall promptly establish and maintain, and regularly monitor, case records in the State case registry with respect to which services are being provided under the State plan approved under this part, on the basis of—

"(A) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;

"(B) information obtained from comparison with Federal, State, or local sources of information;

"(C) information on support collections and distributions; and

"(D) any other relevant information.

"(f) INFORMATION COMPARISONS AND OTHER DISCLOSURES OF INFORMATION.—The State shall use the automated system required by this section to extract information from (at such times, and in such standardized format or formats, as may be required by the Secretary), to share and compare information with, and to receive information from, other data bases and information comparison services, in order to obtain (or provide) information necessary to enable the State agency (or the Secretary or other State or Federal agencies) to carry out this part, subject to section 6103 of the Internal Revenue Code of 1986. Such information comparison activities shall include the following:

"(1) FEDERAL CASE REGISTRY OF CHILD SUPPORT ORDERS.—Furnishing to the Federal Case Registry of Child Support Orders established under section 453(h) (and update as necessary, with information including notice of expiration of orders) the minimum amount of information on child support cases recorded in the State case registry that is necessary to operate the registry (as specified by the Secretary in regulations).

"(2) FEDERAL PARENT LOCATOR SERVICE.—Exchanging information with the Federal Parent Locator Service for the purposes specified in section 453.

"(3) TEMPORARY FAMILY ASSISTANCE AND MEDIGRANT AGENCIES.—Exchanging information with State agencies (of the State and of other States) administering programs funded under part A, programs operated under State plans under title XXI, and other programs designated by the Secretary, as necessary to perform State agency responsibilities under this part and under such programs.

"(4) INTRASTATE AND INTERSTATE INFORMATION COMPARISONS.—Exchanging information with other agencies of the State, agencies of other States, and interstate information networks, as necessary and appropriate to carry out (or assist other States to carry out) the purposes of this part.".

SEC. 12312. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS.

(a) STATE PLAN REQUIREMENT.—Section 454 (42 U.S.C. 654), as amended by sections 12301(b) and 12303(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (25);

(2) by striking the period at the end of paragraph (26) and inserting "; and"; and

(3) by adding after paragraph (26) the following new paragraph:

"(27) provide that, on and after October 1, 1998, the State agency will—

"(A) operate a State disbursement unit in accordance with section 454B; and

"(B) have sufficient State staff (consisting of State employees) and (at State option) contractors reporting directly to the State agency to—

"(i) monitor and enforce support collections through the unit (including carrying out the automated data processing responsibilities described in section 454A(g)); and

"(ii) take the actions described in section 466(c)(1) in appropriate cases.".

(b) ESTABLISHMENT OF STATE DISBURSEMENT UNIT.—Part D of title IV (42 U.S.C. 651–669), as amended by section 12344(a)(2) of this Act, is amended by inserting after section 454A the following new section:

"SEC. 454B. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS.

"(a) STATE DISBURSEMENT UNIT.—

"(1) IN GENERAL.—In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be known as the 'State disbursement unit') for the collection and disbursement of payments under support orders in all cases being enforced by the State pursuant to section 454(4).

"(2) OPERATION.—The State disbursement unit shall be operated—

"(A) directly by the State agency (or 2 or more State agencies under a regional cooperative agreement), or (to the extent appropriate) by a contractor responsible directly to the State agency; and

"(B) in coordination with the automated system established by the State pursuant to section 454A.

"(3) LINKING OF LOCAL DISBURSEMENT UNITS.—The State disbursement unit may be established by linking local disbursement units through an automated information network, subject to this section, if the Secretary agrees that the system will not cost more nor take more time to establish or operate than a centralized system. In addition, employers shall be given 1 location to which income withholding is sent.

"(b) REQUIRED PROCEDURES.—The State disbursement unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures—

"(1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the agencies of other States;

"(2) for accurate identification of payments;

"(3) to ensure prompt disbursement of the custodial parent's share of any payment; and

"(4) to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent.

"(c) TIMING OF DISBURSEMENTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the State disbursement unit shall distribute all amounts payable under section 457(a) within 2 business days after receipt from

the employer or other source of periodic income, if sufficient information identifying the payee is provided.

"(2) PERMISSIVE RETENTION OF ARREARAGES.—The State disbursement unit may delay the distribution of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages.

"(d) BUSINESS DAY DEFINED.—As used in this section, the term 'business day' means a day on which State offices are open for regular business.".

(c) USE OF AUTOMATED SYSTEM.—Section 454A, as added by section 12344(a)(2) and as amended by section 12311 of this Act, is amended by adding at the end the following new subsection:

"(g) COLLECTION AND DISTRIBUTION OF SUPPORT PAYMENTS.—

"(1) IN GENERAL.—The State shall use the automated system required by this section, to the maximum extent feasible, to assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 454B, through the performance of functions, including, at a minimum—

"(A) transmission of orders and notices to employers (and other debtors) for the withholding of wages and other income—

"(i) within 2 business days after receipt from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State of notice of, and the income source subject to, such withholding; and

"(ii) using uniform formats prescribed by the Secretary;

"(B) ongoing monitoring to promptly identify failures to make timely payment of support; and

"(C) automatic use of enforcement procedures (including procedures authorized pursuant to section 466(c)) if payments are not timely made.

"(2) BUSINESS DAY DEFINED.—As used in paragraph (1), the term 'business day' means a day on which State offices are open for regular business.".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1998.

SEC. 12313. STATE DIRECTORY OF NEW HIRES.

(a) STATE PLAN REQUIREMENT.—Section 454 (42 U.S.C. 654), as amended by sections 12301(b), 12303(a) and 12312(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (26);

(2) by striking the period at the end of paragraph (27) and inserting "; and"; and

(3) by adding after paragraph (27) the following new paragraph:

"(28) provide that, on and after October 1, 1997, the State will operate a State Directory of New Hires in accordance with section 453A.".

(b) STATE DIRECTORY OF NEW HIRES.—Part D of title IV (42 U.S.C. 651–669) is amended by inserting after section 453 the following new section:

"SEC. 453A. STATE DIRECTORY OF NEW HIRES.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—

"(A) REQUIREMENT FOR STATES THAT HAVE NO DIRECTORY.—Except as provided in subparagraph (B), not later than October 1, 1997, each State shall establish an automated directory (to be known as the 'State Directory of New Hires') which shall contain information supplied in accordance with subsection (b) by employers on each newly hired employee.

"(B) STATES WITH NEW HIRE REPORTING IN EXISTENCE.—A State which has a new hire reporting law in existence on the date of the enactment of this section may continue to operate under the State law, but the State must meet the requirements of this section (other than subsection (f)) not later than October 1, 1997.

"(2) DEFINITIONS.—As used in this section:

"(A) EMPLOYEE.—The term 'employee'—

"(i) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

"(ii) does not include an employee of a Federal or State agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to paragraph (1) with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

"(B) EMPLOYER.—

"(i) IN GENERAL.—The term 'employer' has the meaning given such term in section 3401(d) of the Internal Revenue Code of 1996 and includes any governmental entity and any labor organization.

"(ii) LABOR ORGANIZATION.—The term 'labor organization' shall have the meaning given such term in section 2(5) of the National Labor Relations Act, and includes any entity (also known as a 'hiring hall') which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of such Act of an agreement between the organization and the employer.

"(b) EMPLOYER INFORMATION.—

"(1) REPORTING REQUIREMENT.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), each employer shall furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that contains the name, address, and social security number of the employee, and the name of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

"(B) MULTISTATE EMPLOYERS.—An employer that has employees who are employed in 2 or more States and that transmits reports magnetically or electronically may comply with subparagraph (A) by designating 1 State in which

such employer has employees to which the employer will transmit the report described in subparagraph (A), and transmitting such report to such State. Any employer that transmits reports pursuant to this subparagraph shall notify the Secretary in writing as to which State such employer designates for the purpose of sending reports.

"(C) FEDERAL GOVERNMENT EMPLOYERS.—Any department, agency, or instrumentality of the United States shall comply with subparagraph (A) by transmitting the report described in subparagraph (A) to the National Directory of New Hires established pursuant to section 453.

"(2) TIMING OF REPORT.—Each State may provide the time within which the report required by paragraph (1) shall be made with respect to an employee, but such report shall be made not later than 20 days after the date the employer hires the employee.

"(c) REPORTING FORMAT AND METHOD.—Each report required by subsection (b) shall be made on a W–4 form or, at the option of the employer, an equivalent form, and may be transmitted by 1st class mail, magnetically, or electronically.

"(d) CIVIL MONEY PENALTIES ON NONCOMPLYING EMPLOYERS.—The State shall have the option to set a State civil money penalty which shall be less than—

"(1) $25; or

"(2) $500 if, under State law, the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.

"(e) ENTRY OF EMPLOYER INFORMATION.—Information shall be entered into the data base maintained by the State Directory of New Hires within 5 business days of receipt from an employer pursuant to subsection (b).

"(f) INFORMATION COMPARISONS.—

"(1) IN GENERAL.—Not later than May 1, 1998, an agency designated by the State shall, directly or by contract, conduct automated comparisons of the social security numbers reported by employers pursuant to subsection (b) and the social security numbers appearing in the records of the State case registry for cases being enforced under the State plan.

"(2) NOTICE OF MATCH.—When an information comparison conducted under paragraph (1) reveals a match with respect to the social security number of an individual required to provide support under a support order, the State Directory of New Hires shall provide the agency administering the State plan approved under this part of the appropriate State with the name, address, and social security number of the employee to whom the social security number is assigned, and the name of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

"(g) TRANSMISSION OF INFORMATION.—

"(1) TRANSMISSION OF WAGE WITHHOLDING NOTICES TO EMPLOYERS.—Within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State agency enforcing the employee's child support obligation shall transmit a notice to the employer

of the employee directing the employer to withhold from the wages of the employee an amount equal to the monthly (or other periodic) child support obligation (including any past due support obligation) of the employee, unless the employee's wages are not subject to withholding pursuant to section 466(b)(3).

"(2) TRANSMISSIONS TO THE NATIONAL DIRECTORY OF NEW HIRES.—

"(A) NEW HIRE INFORMATION.—Within 3 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State Directory of New Hires shall furnish the information to the National Directory of New Hires.

"(B) WAGE AND UNEMPLOYMENT COMPENSATION INFORMATION.—The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires extracts of the reports required under section 303(a)(6) to be made to the Secretary of Labor concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations.

"(3) BUSINESS DAY DEFINED.—As used in this subsection, the term 'business day' means a day on which State offices are open for regular business.

"(h) OTHER USES OF NEW HIRE INFORMATION.—

"(1) LOCATION OF CHILD SUPPORT OBLIGORS.—The agency administering the State plan approved under this part shall use information received pursuant to subsection (f)(2) to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

"(2) VERIFICATION OF ELIGIBILITY FOR CERTAIN PROGRAMS.—A State agency responsible for administering a program specified in section 1137(b) shall have access to information reported by employers pursuant to subsection (b) of this section for purposes of verifying eligibility for the program.

"(3) ADMINISTRATION OF EMPLOYMENT SECURITY AND WORKERS' COMPENSATION.—State agencies operating employment security and workers' compensation programs shall have access to information reported by employers pursuant to subsection (b) for the purposes of administering such programs.".

(c) QUARTERLY WAGE REPORTING.—Section 1137(a)(3) (42 U.S.C. 1320b–7(a)(3)) is amended—

(1) by inserting "(including State and local governmental entities and labor organizations (as defined in section 453A(a)(2)(B)(iii))" after "employers"; and

(2) by inserting ", and except that no report shall be filed with respect to an employee of a State or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission" after "paragraph (2)".

SEC. 12314. AMENDMENTS CONCERNING INCOME WITHHOLDING.

(a) MANDATORY INCOME WITHHOLDING.—

(1) IN GENERAL.—Section 466(a)(1) (42 U.S.C. 666(a)(1)) is amended to read as follows:

"(1)(A) Procedures described in subsection (b) for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

"(B) Procedures under which the wages of a person with a support obligation imposed by a support order issued (or modified) in the State before October 1, 1996, if not otherwise subject to withholding under subsection (b), shall become subject to withholding as provided in subsection (b) if arrearages occur, without the need for a judicial or administrative hearing.".

(2) CONFORMING AMENDMENTS.—

(A) Section 466(b) (42 U.S.C. 666(b)) is amended in the matter preceding paragraph (1), by striking "subsection (a)(1)" and inserting "subsection (a)(1)(A)".

(B) Section 466(b)(4) (42 U.S.C. 666(b)(4)) is amended to read as follows:

"(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies—

"(i) that the withholding has commenced; and

"(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

"(B) The notice under subparagraph (A) of this paragraph shall include the information provided to the employer under paragraph (6)(A).".

(C) Section 466(b)(5) (42 U.S.C. 666(b)(5)) is amended by striking all that follows "administered by" and inserting "the State through the State disbursement unit established pursuant to section 454B, in accordance with the requirements of section 454B.".

(D) Section 466(b)(6)(A) (42 U.S.C. 666(b)(6)(A)) is amended—

(i) in clause (i), by striking "to the appropriate agency" and all that follows and inserting "to the State disbursement unit within 2 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall comply with the procedural rules relating to income withholding of the State in which the employee works, regardless of the State where the notice originates.".

(ii) in clause (ii), by inserting "be in a standard format prescribed by the Secretary, and" after "shall"; and

(iii) by adding at the end the following new clause:

"(iii) As used in this subparagraph, the term 'business day' means a day on which State offices are open for regular business.".

(E) Section 466(b)(6)(D) (42 U.S.C. 666(b)(6)(D)) is amended by striking "any employer" and all that follows and inserting "any employer who—

"(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

"(ii) fails to withhold support from wages, or to pay such amounts to the State disbursement unit in accordance with this subsection.".

(F) Section 466(b) (42 U.S.C. 666(b)) is amended by adding at the end the following new paragraph:

"(11) Procedures under which the agency administering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.".

(b) CONFORMING AMENDMENT.—Section 466(c) (42 U.S.C. 666(c)) is repealed.

SEC. 12315. LOCATOR INFORMATION FROM INTERSTATE NETWORKS.

Section 466(a) (42 U.S.C. 666(a)) is amended by adding at the end the following new paragraph:

"(12) LOCATOR INFORMATION FROM INTERSTATE NETWORKS.—Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.".

SEC. 12316. EXPANSION OF THE FEDERAL PARENT LOCATOR SERVICE.

(a) EXPANDED AUTHORITY TO LOCATE INDIVIDUALS AND ASSETS.—Section 453 (42 U.S.C. 653) is amended—

(1) in subsection (a), by striking all that follows "subsection (c))" and inserting ", for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders—

"(1) information on, or facilitating the discovery of, the location of any individual—

"(A) who is under an obligation to pay child support or provide child custody or visitation rights;

"(B) against whom such an obligation is sought;

"(C) to whom such an obligation is owed,

including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer;

"(2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and

"(3) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual."; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking "social security" and all that follows through "absent parent" and inserting "information described in subsection (a)"; and

(B) in the flush paragraph at the end, by adding the following: "No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent. Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 454(26).".

(b) AUTHORIZED PERSON FOR INFORMATION REGARDING VISITATION RIGHTS.—Section 453(c) (42 U.S.C. 653(c)) is amended—

(1) in paragraph (1), by striking "support" and inserting "support or to seek to enforce orders providing child custody or visitation rights"; and

(2) in paragraph (2), by striking ", or any agent of such court; and" and inserting "or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;".

(c) REIMBURSEMENT FOR INFORMATION FROM FEDERAL AGENCIES.—Section 453(e)(2) (42 U.S.C. 653(e)(2)) is amended in the 4th sentence by inserting "in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information)" before the period.

(d) REIMBURSEMENT FOR REPORTS BY STATE AGENCIES.—Section 453 (42 U.S.C. 653) is amended by adding at the end the following new subsection:

"(g) REIMBURSEMENT FOR REPORTS BY STATE AGENCIES.—The Secretary may reimburse Federal and State agencies for the costs incurred by such entities in furnishing information requested by the Secretary under this section in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information).".

(e) CONFORMING AMENDMENTS.—

(1) Sections 452(a)(9), 453(a), 453(b), 463(a), 463(e), and 463(f) (42 U.S.C. 652(a)(9), 653(a), 653(b), 663(a), 663(e), and 663(f)) are each amended by inserting "Federal" before "Parent" each place such term appears.

(2) Section 453 (42 U.S.C. 653) is amended in the heading by adding "FEDERAL" before "PARENT".

(f) NEW COMPONENTS.—Section 453 (42 U.S.C. 653), as amended by subsection (d) of this section, is amended by adding at the end the following new subsections:

"(h) FEDERAL CASE REGISTRY OF CHILD SUPPORT ORDERS.—

"(1) IN GENERAL.—Not later than October 1, 1998, in order to assist States in administering programs under State plans approved under this part and programs funded under part A, and for the other purposes specified in this section, the Secretary shall establish and maintain in the Federal Parent Loca-

tor Service an automated registry (which shall be known as the 'Federal Case Registry of Child Support Orders'), which shall contain abstracts of support orders and other information described in paragraph (2) with respect to each case in each State case registry maintained pursuant to section 454A(e), as furnished (and regularly updated), pursuant to section 454A(f), by State agencies administering programs under this part.

"(2) CASE INFORMATION.—The information referred to in paragraph (1) with respect to a case shall be such information as the Secretary may specify in regulations (including the names, social security numbers or other uniform identification numbers, and State case identification numbers) to identify the individuals who owe or are owed support (or with respect to or on behalf of whom support obligations are sought to be established), and the State or States which have the case.

"(i) NATIONAL DIRECTORY OF NEW HIRES.—

"(1) IN GENERAL.—In order to assist States in administering programs under State plans approved under this part and programs funded under part A, and for the other purposes specified in this section, the Secretary shall, not later than October 1, 1996, establish and maintain in the Federal Parent Locator Service an automated directory to be known as the National Directory of New Hires, which shall contain the information supplied pursuant to section 453A(g)(2).

"(2) ENTRY OF DATA.—Information shall be entered into the data base maintained by the National Directory of New Hires within 2 business days of receipt pursuant to section 453A(g)(2).

"(3) ADMINISTRATION OF FEDERAL TAX LAWS.—The Secretary of the Treasury shall have access to the information in the National Directory of New Hires for purposes of administering section 32 of the Internal Revenue Code of 1986, or the advance payment of the earned income tax credit under section 3507 of such Code, and verifying a claim with respect to employment in a tax return.

"(4) LIST OF MULTISTATE EMPLOYERS.—The Secretary shall maintain within the National Directory of New Hires a list of multistate employers that report information regarding newly hired employees pursuant to section 453A(b)(1)(B), and the State which each such employer has designated to receive such information.

"(j) INFORMATION COMPARISONS AND OTHER DISCLOSURES.—

"(1) VERIFICATION BY SOCIAL SECURITY ADMINISTRATION.—

"(A) IN GENERAL.—The Secretary shall transmit information on individuals and employers maintained under this section to the Social Security Administration to the extent necessary for verification in accordance with subparagraph (B).

"(B) VERIFICATION BY SSA.—The Social Security Administration shall verify the accuracy of, correct, or supply to the extent possible, and report to the Secretary, the following information supplied by the Secretary pursuant to subparagraph (A):

"(i) The name, social security number, and birth date of each such individual.

"(ii) The employer identification number of each such employer.

"(2) INFORMATION COMPARISONS.—For the purpose of locating individuals in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order, the Secretary shall—

"(A) compare information in the National Directory of New Hires against information in the support case abstracts in the Federal Case Registry of Child Support Orders not less often than every 2 business days; and

"(B) within 2 such days after such a comparison reveals a match with respect to an individual, report the information to the State agency responsible for the case.

"(3) INFORMATION COMPARISONS AND DISCLOSURES OF INFORMATION IN ALL REGISTRIES FOR TITLE IV PROGRAM PURPOSES.—To the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under programs operated under this part and programs funded under part A, the Secretary shall—

"(A) compare the information in each component of the Federal Parent Locator Service maintained under this section against the information in each other such component (other than the comparison required by paragraph (2)), and report instances in which such a comparison reveals a match with respect to an individual to State agencies operating such programs; and

"(B) disclose information in such registries to such State agencies.

"(4) PROVISION OF NEW HIRE INFORMATION TO THE SOCIAL SECURITY ADMINISTRATION.—The National Directory of New Hires shall provide the Commissioner of Social Security with all information in the National Directory, which shall be used to determine the accuracy of payments under the supplemental security income program under title XVI and in connection with benefits under title II.

"(5) RESEARCH.—The Secretary may provide access to information reported by employers pursuant to section 453A(b) for research purposes found by the Secretary to be likely to contribute to achieving the purposes of part A or this part, but without personal identifiers.

"(k) FEES.—

"(1) FOR SSA VERIFICATION.—The Secretary shall reimburse the Commissioner of Social Security, at a rate negotiated between the Secretary and the Commissioner, for the costs incurred by the Commissioner in performing the verification services described in subsection (j).

"(2) FOR INFORMATION FROM STATE DIRECTORIES OF NEW HIRES.—The Secretary shall reimburse costs incurred by State directories of new hires in furnishing information as required by subsection (j)(3), at rates which the Secretary determines to be reasonable (which rates shall not include payment for the costs of obtaining, compiling, or maintaining such information).

"(3) FOR INFORMATION FURNISHED TO STATE AND FEDERAL AGENCIES.—A State or Federal agency that receives information

from the Secretary pursuant to this section shall reimburse the Secretary for costs incurred by the Secretary in furnishing the information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and comparing the information).

"(l) RESTRICTION ON DISCLOSURE AND USE.—Information in the Federal Parent Locator Service, and information resulting from comparisons using such information, shall not be used or disclosed except as expressly provided in this section, subject to section 6103 of the Internal Revenue Code of 1986.

"(m) INFORMATION INTEGRITY AND SECURITY.—The Secretary shall establish and implement safeguards with respect to the entities established under this section designed to—

"(1) ensure the accuracy and completeness of information in the Federal Parent Locator Service; and

"(2) restrict access to confidential information in the Federal Parent Locator Service to authorized persons, and restrict use of such information to authorized purposes.

"(n) FEDERAL GOVERNMENT REPORTING.—Each department, agency, and instrumentality of the United States shall on a quarterly basis report to the Federal Parent Locator Service the name and social security number of each employee and the wages paid to the employee during the previous quarter, except that such a report shall not be filed with respect to an employee of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.".

(g) CONFORMING AMENDMENTS.—

(1) TO PART D OF TITLE IV OF THE SOCIAL SECURITY ACT.—

(A) Section 454(8)(B) (42 U.S.C. 654(8)(B)) is amended to read as follows:

"(B) the Federal Parent Locator Service established under section 453;".

(B) Section 454(13) (42 U.S.C.654(13)) is amended by inserting "and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan" before the semicolon.

(2) TO FEDERAL UNEMPLOYMENT TAX ACT.—Section 3304(a)(16) of the Internal Revenue Code of 1986 is amended—

(A) by striking "Secretary of Health, Education, and Welfare" each place such term appears and inserting "Secretary of Health and Human Services";

(B) in subparagraph (B), by striking "such information" and all that follows and inserting "information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph;";

(C) by striking "and" at the end of subparagraph (A);

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

(E) by inserting after subparagraph (A) the following new subparagraph:

"(B) wage and unemployment compensation information contained in the records of such agency shall be furnished to the Secretary of Health and Human Services (in accordance with regulations promulgated by such Secretary) as necessary for the purposes of the National Directory of New Hires established under section 453(i) of the Social Security Act, and".

(3) TO STATE GRANT PROGRAM UNDER TITLE III OF THE SOCIAL SECURITY ACT.—Subsection (h) of section 303 (42 U.S.C. 503) is amended to read as follows:

"(h)(1) The State agency charged with the administration of the State law shall, on a reimbursable basis—

"(A) disclose quarterly, to the Secretary of Health and Human Services wage and claim information, as required pursuant to section 453(i)(1), contained in the records of such agency;

"(B) ensure that information provided pursuant to subparagraph (A) meets such standards relating to correctness and verification as the Secretary of Health and Human Services, with the concurrence of the Secretary of Labor, may find necessary; and

"(C) establish such safeguards as the Secretary of Labor determines are necessary to insure that information disclosed under subparagraph (A) is used only for purposes of section 453(i)(1) in carrying out the child support enforcement program under title IV.

"(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Secretary shall make no future certification to the Secretary of the Treasury with respect to the State.

"(3) For purposes of this subsection—

"(A) the term 'wage information' means information regarding wages paid to an individual, the social security account number of such individual, and the name, address, State, and the Federal employer identification number of the employer paying such wages to such individual; and

"(B) the term 'claim information' means information regarding whether an individual is receiving, has received, or has made application for, unemployment compensation, the amount of any such compensation being received (or to be received by such individual), and the individual's current (or most recent) home address.".

(4) DISCLOSURE OF CERTAIN INFORMATION TO AGENTS OF CHILD SUPPORT ENFORCEMENT AGENCIES.—

(A) IN GENERAL.—Paragraph (6) of section 6103(l) of the Internal Revenue Code of 1986 (relating to disclosure of return information to Federal, State, and local child sup-

port enforcement agencies) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) DISCLOSURE TO CERTAIN AGENTS.—The address and social security account number (or numbers) of an individual with respect to any individual with respect to whom child support obligations are sought to be established or enforced may be disclosed by any child support enforcement agency to any agent of such agency which is under contract with such agency to carry out the purposes described in subparagraph (C)."

(B) CONFORMING AMENDMENTS.—

(i) Paragraph (3) of section 6103(a) of such Code is amended by striking "(l)(12)" and inserting "paragraph (6) or (12) of subsection (l)".

(ii) Subparagraph (C) of section 6103(l)(6) of such Code, as redesignated by subsection (a), is amended to read as follows:

"(C) RESTRICTION ON DISCLOSURE.—Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations."

(iii) The material following subparagraph (F) of section 6103(p)(4) of such Code is amended by striking "subsection (l)(12)(B)" and inserting "paragraph (6)(A) or (12)(B) of subsection (l)".

SEC. 12317. COLLECTION AND USE OF SOCIAL SECURITY NUMBERS FOR USE IN CHILD SUPPORT ENFORCEMENT.

(a) STATE LAW REQUIREMENT.—Section 466(a) (42 U.S.C. 666(a)), as amended by section 12315 of this Act, is amended by adding at the end the following new paragraph:

"(13) RECORDING OF SOCIAL SECURITY NUMBERS IN CERTAIN FAMILY MATTERS.—Procedures requiring that the social security number of—

"(A) any applicant for a professional license, commercial driver's license, occupational license, or marriage license be recorded on the application;

"(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

"(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A), if a State allows the use of a number other than the social security number, the State shall so advise any applicants.".

(b) CONFORMING AMENDMENTS.—Section 205(c)(2)(C) (42 U.S.C. 405(c)(2)(C)), as amended by section 321(a)(9) of the Social Security Independence and Program Improvements Act of 1994, is amended—

(1) in clause (i), by striking "may require" and inserting "shall require";

(2) in clause (ii), by inserting after the 1st sentence the following: "In the administration of any law involving the issuance of a marriage certificate or license, each State shall require each party named in the certificate or license to furnish to the State (or political subdivision thereof), or any State agency having administrative responsibility for the law involved, the social security number of the party.";

(3) in clause (ii), by inserting "or marriage certificate" after "Such numbers shall not be recorded on the birth certificate".

(4) in clause (vi), by striking "may" and inserting "shall"; and

(5) by adding at the end the following new clauses:

"(x) An agency of a State (or a political subdivision thereof) charged with the administration of any law concerning the issuance or renewal of a license, certificate, permit, or other authorization to engage in a profession, an occupation, or a commercial activity shall require all applicants for issuance or renewal of the license, certificate, permit, or other authorization to provide the applicant's social security number to the agency for the purpose of administering such laws, and for the purpose of responding to requests for information from an agency operating pursuant to part D of title IV.

"(xi) All divorce decrees, support orders, and paternity determinations issued, and all paternity acknowledgments made, in each State shall include the social security number of each party to the decree, order, determination, or acknowledgement in the records relating to the matter, for the purpose of responding to requests for information from an agency operating pursuant to part D of title IV.".

CHAPTER 3—STREAMLINING AND UNIFORMITY OF PROCEDURES

SEC. 12321. ADOPTION OF UNIFORM STATE LAWS.

Section 466 (42 U.S.C. 666) is amended by adding at the end the following new subsection:

"(f) UNIFORM INTERSTATE FAMILY SUPPORT ACT.—

"(1) ENACTMENT AND USE.—In order to satisfy section 454(20)(A), on or after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws.

"(2) EMPLOYERS TO FOLLOW PROCEDURAL RULES OF STATE WHERE EMPLOYEE WORKS.—The State law enacted pursuant to paragraph (1) shall provide that an employer that receives an income withholding order or notice pursuant to section 501 of the Uniform Interstate Family Support Act follow the procedural rules that apply with respect to such order or notice under the laws of the State in which the obligor works.

SEC. 12322. IMPROVEMENTS TO FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS.

Section 1738B of title 28, United States Code, is amended—

(1) in subsection (a)(2), by striking "subsection (e)" and inserting "subsections (e), (f), and (i)";

(2) in subsection (b), by inserting after the 2nd undesignated paragraph the following:

" 'child's home State' means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.";

(3) in subsection (c), by inserting "by a court of a State" before "is made";

(4) in subsection (c)(1), by inserting "and subsections (e), (f), and (g)" after "located";

(5) in subsection (d)—

(A) by inserting "individual" before "contestant"; and

(B) by striking "subsection (e)" and inserting "subsections (e) and (f)";

(6) in subsection (e), by striking "make a modification of a child support order with respect to a child that is made" and inserting "modify a child support order issued";

(7) in subsection (e)(1), by inserting "pursuant to subsection (i)" before the semicolon;

(8) in subsection (e)(2)—

(A) by inserting "individual" before "contestant" each place such term appears; and

(B) by striking "to that court's making the modification and assuming" and inserting "with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume";

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively;

(10) by inserting after subsection (e) the following new subsection:

"(f) RECOGNITION OF CHILD SUPPORT ORDERS.—If 1 or more child support orders have been issued in this or another State with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

"(1) If only 1 court has issued a child support order, the order of that court must be recognized.

"(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

"(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued

in the current home State of the child, the order most recently issued must be recognized.

“(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court may issue a child support order, which must be recognized.

“(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction.”;

(11) in subsection (g) (as so redesignated)—

(A) by striking “PRIOR” and inserting “MODIFIED”; and

(B) by striking “subsection (e)” and inserting “subsections (e) and (f)”;

(12) in subsection (h) (as so redesignated)—

(A) in paragraph (2), by inserting “including the duration of current payments and other obligations of support” before the comma; and

(B) in paragraph (3), by inserting “arrears under” after “enforce”; and

(13) by adding at the end the following new subsection:

“(i) REGISTRATION FOR MODIFICATION.—If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.”.

SEC. 12323. ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 12315 and 12317(a) of this Act, is amended by adding at the end the following new paragraph:

“(14) ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.—Procedures under which—

“(A)(i) the State shall respond within 5 business days to a request made by another State to enforce a support order; and

“(ii) the term ‘business day’ means a day on which State offices are open for regular business;

“(B) the State may, by electronic or other means, transmit to another State a request for assistance in a case involving the enforcement of a support order, which request—

“(i) shall include such information as will enable the State to which the request is transmitted to compare the information about the case to the information in the data bases of the State; and

“(ii) shall constitute a certification by the requesting State—

“(I) of the amount of support under the order the payment of which is in arrears; and

“(II) that the requesting State has complied with all procedural due process requirements applicable to the case;

“(C) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither

State shall consider the case to be transferred to the caseload of such other State; and

"(D) the State shall maintain records of—

"(i) the number of such requests for assistance received by the State;

"(ii) the number of cases for which the State collected support in response to such a request; and

"(iii) the amount of such collected support.".

SEC. 12324. USE OF FORMS IN INTERSTATE ENFORCEMENT.

(a) PROMULGATION.—Section 452(a) (42 U.S.C. 652(a)) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting "; and"; and

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

"(11) not later than June 30, 1996, after consulting with the State directors of programs under this part, promulgate forms to be used by States in interstate cases for—

"(A) collection of child support through income withholding;

"(B) imposition of liens; and

"(C) administrative subpoenas.".

(b) USE BY STATES.—Section 454(9) (42 U.S.C. 654(9)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by inserting "and" at the end of subparagraph (D); and

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

"(E) no later than October 1, 1996, in using the forms promulgated pursuant to section 452(a)(11) for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;".

SEC. 12325. STATE LAWS PROVIDING EXPEDITED PROCEDURES.

(a) STATE LAW REQUIREMENTS.—Section 466 (42 U.S.C. 666), as amended by section 12314 of this Act, is amended—

(1) in subsection (a)(2), by striking the 1st sentence and inserting the following: "Expedited administrative and judicial procedures (including the procedures specified in subsection (c)) for establishing paternity and for establishing, modifying, and enforcing support obligations."; and

(2) by inserting after subsection (b) the following new subsection:

"(c) EXPEDITED PROCEDURES.—The procedures specified in this subsection are the following:

"(1) ADMINISTRATIVE ACTION BY STATE AGENCY.—Procedures which give the State agency the authority to take the following actions relating to establishment or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States) to take the following actions:

"(A) GENETIC TESTING.—To order genetic testing for the purpose of paternity establishment as provided in section 466(a)(5).

"(B) FINANCIAL OR OTHER INFORMATION.—To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

"(C) RESPONSE TO STATE AGENCY REQUEST.—To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

"(D) ACCESS TO CERTAIN RECORDS.—To obtain access, subject to safeguards on privacy and information security, to the following records (including automated access, in the case of records maintained in automated data bases):

"(i) Records of other State and local government agencies, including—

"(I) vital statistics (including records of marriage, birth, and divorce);

"(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

"(III) records concerning real and titled personal property;

"(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

"(V) employment security records;

"(VI) records of agencies administering public assistance programs;

"(VII) records of the motor vehicle department; and

"(VIII) corrections records.

"(ii) Certain records held by private entities, including—

"(I) customer records of public utilities and cable television companies; and

"(II) information (including information on assets and liabilities) on individuals who owe or are owed support (or against or with respect to whom a support obligation is sought) held by financial institutions (subject to limitations on liability of such entities arising from affording such access), as provided pursuant to agreements described in subsection (a)(18).

"(E) CHANGE IN PAYEE.—In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A or section 1912, or to a requirement to pay through the State disbursement unit established pursuant to section 454B, upon providing notice

to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

"(F) INCOME WITHHOLDING.—To order income withholding in accordance with subsections (a)(1) and (b) of section 466.

"(G) SECURING ASSETS.—In cases in which there is a support arrearage, to secure assets to satisfy the arrearage by—

"(i) intercepting or seizing periodic or lump-sum payments from—

"(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

"(II) judgments, settlements, and lotteries;

"(ii) attaching and seizing assets of the obligor held in financial institutions;

"(iii) attaching public and private retirement funds; and

"(iv) imposing liens in accordance with subsection (a)(4) and, in appropriate cases, to force sale of property and distribution of proceeds.

"(H) INCREASE MONTHLY PAYMENTS.—For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages, subject to such conditions or limitations as the State may provide.

Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

"(2) SUBSTANTIVE AND PROCEDURAL RULES.—The expedited procedures required under subsection (a)(2) shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

"(A) LOCATOR INFORMATION; PRESUMPTIONS CONCERNING NOTICE.—Procedures under which—

"(i) each party to any paternity or child support proceeding is required (subject to privacy safeguards) to file with the tribunal and the State case registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and name and telephone number of employer; and

"(ii) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the tribunal may deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the tribunal pursuant to clause (i).

"(B) STATEWIDE JURISDICTION.—Procedures under which—

"(i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties; and

"(ii) in a State in which orders are issued by courts or administrative tribunals, a case may be transferred between local jurisdictions in the State without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties.

"(3) COORDINATION WITH ERISA.—Notwithstanding subsection (d) of section 514 of the Employee Retirement Income Security Act of 1974 (relating to effect on other laws), nothing in this subsection shall be construed to alter, amend, modify, invalidate, impair, or supersede subsections (a), (b), and (c) of such section 514 as it applies with respect to any procedure referred to in paragraph (1) and any expedited procedure referred to in paragraph (2), except to the extent that such procedure would be consistent with the requirements of section 206(d)(3) of such Act (relating to qualified domestic relations orders) or the requirements of section 609(a) of such Act (relating to qualified medical child support orders) if the reference in such section 206(d)(3) to a domestic relations order and the reference in such section 609(a) to a medical child support order were a reference to a support order referred to in paragraphs (1) and (2) relating to the same matters, respectively.".

(b) AUTOMATION OF STATE AGENCY FUNCTIONS.—Section 454A, as added by section 12344(a)(2) and as amended by sections 12311 and 12312(c) of this Act, is amended by adding at the end the following new subsection:

"(h) EXPEDITED ADMINISTRATIVE PROCEDURES.—The automated system required by this section shall be used, to the maximum extent feasible, to implement the expedited administrative procedures required by section 466(c).".

CHAPTER 4—PATERNITY ESTABLISHMENT

SEC. 12331. STATE LAWS CONCERNING PATERNITY ESTABLISHMENT.

(a) STATE LAWS REQUIRED.—Section 466(a)(5) (42 U.S.C. 666(a)(5)) is amended to read as follows:

"(5) PROCEDURES CONCERNING PATERNITY ESTABLISHMENT.—

"(A) ESTABLISHMENT PROCESS AVAILABLE FROM BIRTH UNTIL AGE 18.—

"(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

"(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

"(B) PROCEDURES CONCERNING GENETIC TESTING.—

"(i) GENETIC TESTING REQUIRED IN CERTAIN CONTESTED CASES.—Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 454(29) to have good cause for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

"(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

"(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

"(ii) OTHER REQUIREMENTS.—Procedures which require the State agency, in any case in which the agency orders genetic testing—

"(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

"(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

"(C) VOLUNTARY PATERNITY ACKNOWLEDGMENT.—

"(i) SIMPLE CIVIL PROCESS.—Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

"(ii) HOSPITAL-BASED PROGRAM.—Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child, subject to such good cause exceptions, taking into account the best interests of the child, as the State may establish.

"(iii) PATERNITY ESTABLISHMENT SERVICES.—

"(I) STATE-OFFERED SERVICES.—Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

"(II) REGULATIONS.—

"(aa) SERVICES OFFERED BY HOSPITALS AND BIRTH RECORD AGENCIES.—The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

"(bb) SERVICES OFFERED BY OTHER ENTITIES.—The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.

"(iv) USE OF PATERNITY ACKNOWLEDGMENT AFFIDAVIT.—Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit developed by the Secretary under section 452(a)(7) for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

"(D) STATUS OF SIGNED PATERNITY ACKNOWLEDGMENT.—

"(i) INCLUSION IN BIRTH RECORDS.—Procedures under which the name of the father shall be included on the record of birth of the child only if—

"(I) the father and mother have signed a voluntary acknowledgment of paternity; or

"(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

"(ii) LEGAL FINDING OF PATERNITY.—Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

"(I) 60 days; or

"(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

"(iii) CONTEST.—Procedures under which, after the 60-day period referred to in clause (ii), a signed vol-

untary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

''(E) BAR ON ACKNOWLEDGMENT RATIFICATION PROCEEDINGS.—Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

''(F) ADMISSIBILITY OF GENETIC TESTING RESULTS.—Procedures—

''(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is—

''(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

''(II) performed by a laboratory approved by such an accreditation body;

''(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

''(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

''(G) PRESUMPTION OF PATERNITY IN CERTAIN CASES.—Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

''(H) DEFAULT ORDERS.—Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

''(I) NO RIGHT TO JURY TRIAL.—Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

''(J) TEMPORARY SUPPORT ORDER BASED ON PROBABLE PATERNITY IN CONTESTED CASES.—Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

''(K) PROOF OF CERTAIN SUPPORT AND PATERNITY ESTABLISHMENT COSTS.—Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as

evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

"(L) STANDING OF PUTATIVE FATHERS.—Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

"(M) FILING OF ACKNOWLEDGMENTS AND ADJUDICATIONS IN STATE REGISTRY OF BIRTH RECORDS.—Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.".

(b) NATIONAL PATERNITY ACKNOWLEDGMENT AFFIDAVIT.—Section 452(a)(7) (42 U.S.C. 652(a)(7)) is amended by inserting ", and develop an affidavit to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent and, after consultation with the States, other common elements as determined by such designee" before the semicolon.

(c) CONFORMING AMENDMENT.—Section 468 (42 U.S.C. 668) is amended by striking "a simple civil process for voluntarily acknowledging paternity and".

SEC. 12332. OUTREACH FOR VOLUNTARY PATERNITY ESTABLISHMENT.

Section 454(23) (42 U.S.C. 654(23)) is amended by inserting "and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate" before the semicolon.

SEC. 12333. COOPERATION BY APPLICANTS FOR AND RECIPIENTS OF TEMPORARY FAMILY ASSISTANCE.

Section 454 (42 U.S.C. 654), as amended by sections 12301(b), 12303(a), 12312(a), and 12313(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (27);

(2) by striking the period at the end of paragraph (28) and inserting "; and"; and

(3) by inserting after paragraph (28) the following new paragraph:

"(29) provide that the State agency responsible for administering the State plan—

"(A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program funded under part A or the State program under title XXI is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to such good cause exceptions, taking into account the best interests of the child, as the State may establish through the State agency, or at the option of the State, through the State agencies administering the State programs funded under part A and title XXI;

"(B) shall require the individual to supply additional necessary information and appear at interviews, hearings, and legal proceedings;

"(C) shall require the individual and the child to submit to genetic tests pursuant to judicial or administrative order;

"(D) may request that the individual sign a voluntary acknowledgment of paternity, after notice of the rights and consequences of such an acknowledgment, but may not require the individual to sign an acknowledgment or otherwise relinquish the right to genetic tests as a condition of cooperation and eligibility for assistance under the State program funded under part A or the State program under title XXI; and

"(E) shall promptly notify the individual and the State agency administering the State program funded under part A and the State agency administering the State program under title XXI of each such determination, and if noncooperation is determined, the basis therefore.".

CHAPTER 5—PROGRAM ADMINISTRATION AND FUNDING

SEC. 12341. PERFORMANCE-BASED INCENTIVES AND PENALTIES.

(a) DEVELOPMENT OF NEW SYSTEM.—The Secretary of Health and Human Services, in consultation with State directors of programs under part D of title IV of the Social Security Act, shall develop a new incentive system to replace the system under section 458 of such Act. The new system shall provide additional payments to any State based on such State's performance under such a program.

(b) CONFORMING AMENDMENTS TO PRESENT SYSTEM.—Section 458 (42 U.S.C. 658) is amended—

(1) in subsection (a), by striking "aid to families with dependent children under a State plan approved under part A of this title" and inserting "assistance under a program funded under part A";

(2) in subsection (b)(1)(A), by striking "section 402(a)(26)" and inserting "section 407(a)(4)";

(3) in subsections (b) and (c)—

(A) by striking "AFDC collections" each place it appears and inserting "title IV–A collections", and

(B) by striking "non-AFDC collections" each place it appears and inserting "non-title IV–A collections"; and

(4) in subsection (c), by striking "combined AFDC/non-AFDC administrative costs" both places it appears and inserting "combined title IV–A/non-title IV–A administrative costs".

(c) CALCULATION OF IV–D PATERNITY ESTABLISHMENT PERCENTAGE.—

(1) Section 452(g)(1) (42 U.S.C. 652(g)(1)) is amended in each of subparagraphs (A) and (B), by striking "75" and inserting "90".

(2) Section 452(g)(2)(A) (42 U.S.C. 652(g)(2)(A)) is amended in the matter preceding clause (i)—

(A) by striking "paternity establishment percentage" and inserting "IV–D paternity establishment percentage"; and

(B) by striking "(or all States, as the case may be)".

(3) Section 452(g)(2) (42 U.S.C. 652(g)(2)) is amended by adding at the end the following new sentence: "In meeting the 90 percent paternity establishment requirement, a State may calculate either the paternity establishment rate of cases in the program funded under this part or the paternity establishment rate of all out-of-wedlock births in the State.".

(4) Section 452(g)(3) (42 U.S.C. 652(g)(3)) is amended—

(A) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(B) in subparagraph (A) (as so redesignated), by striking "the percentage of children born out-of-wedlock in a State" and inserting "the percentage of children in a State who are born out of wedlock or for whom support has not been established"; and

(C) in subparagraph (B) (as so redesignated) by inserting "and securing support" before the period.

(d) EFFECTIVE DATES.—

(1) INCENTIVE ADJUSTMENTS.—

(A) IN GENERAL.—The system developed under subsection (a) and the amendments made by subsection (b) shall become effective on October 1, 1997, except to the extent provided in subparagraph (B).

(B) APPLICATION OF SECTION 458.—Section 458 of the Social Security Act, as in effect on the day before the date of the enactment of this section, shall be effective for purposes of incentive payments to States for fiscal years before fiscal year 1999.

(2) PENALTY REDUCTIONS.—The amendments made by subsection (c) shall become effective with respect to calendar quarters beginning on or after the date of the enactment of this Act.

SEC. 12342. FEDERAL AND STATE REVIEWS AND AUDITS.

(a) STATE AGENCY ACTIVITIES.—Section 454 (42 U.S.C. 654) is amended—

(1) in paragraph (14), by striking "(14)" and inserting "(14)(A)";

(2) by redesignating paragraph (15) as subparagraph (B) of paragraph (14); and

(3) by inserting after paragraph (14) the following new paragraph:

"(15) provide for—

"(A) a process for annual reviews of and reports to the Secretary on the State program operated under the State plan approved under this part, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures, using such standards and procedures as are required by the Secretary, under which the State agency will determine the extent to which the program is operated in compliance with this part; and

"(B) a process of extracting from the automated data processing system required by paragraph (16) and transmitting to the Secretary data and calculations concerning the levels of accomplishment (and rates of improvement)

with respect to applicable performance indicators (including IV–D paternity establishment percentages to the extent necessary for purposes of sections 452(g) and 458.".

(b) FEDERAL ACTIVITIES.—Section 452(a)(4) (42 U.S.C. 652(a)(4)) is amended to read as follows:

"(4)(A) review data and calculations transmitted by State agencies pursuant to section 454(15)(B) on State program accomplishments with respect to performance indicators for purposes of subsection (g) of this section and section 458;

"(B) review annual reports submitted pursuant to section 454(15)(A) and, as appropriate, provide to the State comments, recommendations for additional or alternative corrective actions, and technical assistance; and

"(C) conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

"(i) at least once every 3 years (or more frequently, in the case of a State which fails to meet the requirements of this part concerning performance standards and reliability of program data) to assess the completeness, reliability, and security of the data, and the accuracy of the reporting systems, used in calculating performance indicators under subsection (g) of this section and section 458;

"(ii) of the adequacy of financial management of the State program operated under the State plan approved under this part, including assessments of—

"(I) whether Federal and other funds made available to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

"(II) whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

"(iii) for such other purposes as the Secretary may find necessary;".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to calendar quarters beginning 12 months or more after the date of the enactment of this Act.

SEC. 12343. REQUIRED REPORTING PROCEDURES.

(a) ESTABLISHMENT.—Section 452(a)(5) (42 U.S.C. 652(a)(5)) is amended by inserting ", and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures" before the semicolon.

(b) STATE PLAN REQUIREMENT.—Section 454 (42 U.S.C. 654), as amended by sections 12301(b), 12303(a), 12312(a), 12313(a), and 12333 of this Act, is amended—

(1) by striking "and" at the end of paragraph (28);

(2) by striking the period at the end of paragraph (29) and inserting "; and"; and

(3) by adding after paragraph (29) the following new paragraph:

“(30) provide that the State shall use the definitions established under section 452(a)(5) in collecting and reporting information as required under this part.”.

SEC. 12344. AUTOMATED DATA PROCESSING REQUIREMENTS.

(a) REVISED REQUIREMENTS.—

(1) IN GENERAL.—Section 454(16) (42 U.S.C. 654(16)) is amended—

(A) by striking “, at the option of the State,”;

(B) by inserting “and operation by the State agency” after “for the establishment”;

(C) by inserting “meeting the requirements of section 454A” after “information retrieval system”;

(D) by striking “in the State and localities thereof, so as (A)” and inserting “so as”;

(E) by striking “(i)”; and

(F) by striking “(including” and all that follows and inserting a semicolon.

(2) AUTOMATED DATA PROCESSING.—Part D of title IV (42 U.S.C. 651–669) is amended by inserting after section 454 the following new section:

“SEC. 454A. AUTOMATED DATA PROCESSING.

“(a) IN GENERAL.—In order for a State to meet the requirements of this section, the State agency administering the State program under this part shall have in operation a single statewide automated data processing and information retrieval system which has the capability to perform the tasks specified in this section with the frequency and in the manner required by or under this part.

“(b) PROGRAM MANAGEMENT.—The automated system required by this section shall perform such functions as the Secretary may specify relating to management of the State program under this part, including—

“(1) controlling and accounting for use of Federal, State, and local funds in carrying out the program; and

“(2) maintaining the data necessary to meet Federal reporting requirements under this part on a timely basis.

“(c) CALCULATION OF PERFORMANCE INDICATORS.—In order to enable the Secretary to determine the incentive payments and penalty adjustments required by sections 452(g) and 458, the State agency shall—

“(1) use the automated system—

“(A) to maintain the requisite data on State performance with respect to paternity establishment and child support enforcement in the State; and

“(B) to calculate the IV–D paternity establishment percentage for the State for each fiscal year; and

“(2) have in place systems controls to ensure the completeness and reliability of, and ready access to, the data described in paragraph (1)(A), and the accuracy of the calculations described in paragraph (1)(B).

“(d) INFORMATION INTEGRITY AND SECURITY.—The State agency shall have in effect safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the automated system required by this section, which shall include the following (in addi-

tion to such other safeguards as the Secretary may specify in regulations):

"(1) POLICIES RESTRICTING ACCESS.—Written policies concerning access to data by State agency personnel, and sharing of data with other persons, which—

"(A) permit access to and use of data only to the extent necessary to carry out the State program under this part; and

"(B) specify the data which may be used for particular program purposes, and the personnel permitted access to such data.

"(2) SYSTEMS CONTROLS.—Systems controls (such as passwords or blocking of fields) to ensure strict adherence to the policies described in paragraph (1).

"(3) MONITORING OF ACCESS.—Routine monitoring of access to and use of the automated system, through methods such as audit trails and feedback mechanisms, to guard against and promptly identify unauthorized access or use.

"(4) TRAINING AND INFORMATION.—Procedures to ensure that all personnel (including State and local agency staff and contractors) who may have access to or be required to use confidential program data are informed of applicable requirements and penalties (including those in section 6103 of the Internal Revenue Code of 1986), and are adequately trained in security procedures.

"(5) PENALTIES.—Administrative penalties (up to and including dismissal from employment) for unauthorized access to, or disclosure or use of, confidential data.".

(3) REGULATIONS.—The Secretary of Health and Human Services shall prescribe final regulations for implementation of section 454A of the Social Security Act not later than 2 years after the date of the enactment of this Act.

(4) IMPLEMENTATION TIMETABLE.—Section 454(24) (42 U.S.C. 654(24)), as amended by section 12303(a)(1) of this Act, is amended to read as follows:

"(24) provide that the State will have in effect an automated data processing and information retrieval system—

"(A) by October 1, 1997, which meets all requirements of this part which were enacted on or before the date of enactment of the Family Support Act of 1988, and

"(B) by October 1, 1999, which meets all requirements of this part enacted on or before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1995, except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 12344(a)(3) of the Personal Responsibility and Work Opportunity Act of 1995;".

(b) SPECIAL FEDERAL MATCHING RATE FOR DEVELOPMENT COSTS OF AUTOMATED SYSTEMS.—

(1) IN GENERAL.—Section 455(a) (42 U.S.C. 655(a)) is amended—

(A) in paragraph (1)(B)—

(i) by striking "90 percent" and inserting "the percent specified in paragraph (3)";

(ii) by striking "so much of"; and

(iii) by striking "which the Secretary" and all that follows and inserting ", and"; and

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

"(3)(A) The Secretary shall pay to each State, for each quarter in fiscal years 1996 and 1997, 90 percent of so much of the State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements specified in section 454(16) (as in effect on September 30, 1995) but limited to the amount approved for States in the advance planning documents of such States submitted on or before May 1, 1995.

"(B)(i) The Secretary shall pay to each State, for each quarter in fiscal years 1997 through 2001, the percentage specified in clause (ii) of so much of the State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements of sections 454(16) and 454A.

"(ii) The percentage specified in this clause is 80 percent.".

(2) TEMPORARY LIMITATION ON PAYMENTS UNDER SPECIAL FEDERAL MATCHING RATE.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not pay more than $400,000,000 in the aggregate under section 455(a)(3) of the Social Security Act for fiscal years 1996, 1997, 1998, 1999, and 2000.

(B) ALLOCATION OF LIMITATION AMONG STATES.—The total amount payable to a State under section 455(a)(3) of such Act for fiscal years 1996, 1997, 1998, 1999, and 2000 shall not exceed the limitation determined for the State by the Secretary of Health and Human Services in regulations.

(C) ALLOCATION FORMULA.—The regulations referred to in subparagraph (B) shall prescribe a formula for allocating the amount specified in subparagraph (A) among States with plans approved under part D of title IV of the Social Security Act, which shall take into account—

(i) the relative size of State caseloads under such part; and

(ii) the level of automation needed to meet the automated data processing requirements of such part.

(c) CONFORMING AMENDMENT.—Section 123(c) of the Family Support Act of 1988 (102 Stat. 2352; Public Law 100–485) is repealed.

SEC. 12345. TECHNICAL ASSISTANCE.

(a) FOR TRAINING OF FEDERAL AND STATE STAFF, RESEARCH AND DEMONSTRATION PROGRAMS, AND SPECIAL PROJECTS OF REGIONAL OR NATIONAL SIGNIFICANCE.—Section 452 (42 U.S.C. 652) is amended by adding at the end the following new subsection:

"(j) Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 1 percent of the total amount paid to the Federal Government pursuant to section 457(a) during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the 3rd calendar quarter following the end of such preceding fiscal year), to cover costs incurred by the Secretary for—

"(1) information dissemination and technical assistance to States, training of State and Federal staff, staffing studies, and related activities needed to improve programs under this part (including technical assistance concerning State automated systems required by this part); and

"(2) research, demonstration, and special projects of regional or national significance relating to the operation of State programs under this part.".

(b) OPERATION OF FEDERAL PARENT LOCATOR SERVICE.—Section 453 (42 U.S.C. 653), as amended by section 12316 of this Act, is amended by adding at the end the following new subsection:

"(o) RECOVERY OF COSTS.—Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 2 percent of the total amount paid to the Federal Government pursuant to section 457(a) during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the 3rd calendar quarter following the end of such preceding fiscal year), to cover costs incurred by the Secretary for operation of the Federal Parent Locator Service under this section, to the extent such costs are not recovered through user fees.".

SEC. 12346. REPORTS AND DATA COLLECTION BY THE SECRETARY.

(a) ANNUAL REPORT TO CONGRESS.—

(1) Section 452(a)(10)(A) (42 U.S.C. 652(a)(10)(A)) is amended—

(A) by striking "this part;" and inserting "this part, including—"; and

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

"(i) the total amount of child support payments collected as a result of services furnished during the fiscal year to individuals receiving services under this part;

"(ii) the cost to the States and to the Federal Government of so furnishing the services; and

"(iii) the number of cases involving families—

"(I) who became ineligible for assistance under State programs funded under part A during a month in the fiscal year; and

"(II) with respect to whom a child support payment was received in the month;".

(2) Section 452(a)(10)(C) (42 U.S.C. 652(a)(10)(C)) is amended—

(A) in the matter preceding clause (i)—

(i) by striking "with the data required under each clause being separately stated for cases" and inserting "separately stated for (1) cases";

(ii) by striking "cases where the child was formerly receiving" and inserting "or formerly received";

(iii) by inserting "or 1912" after "471(a)(17)"; and

(iv) by inserting "(2)" before "all other";

(B) in each of clauses (i) and (ii), by striking ", and the total amount of such obligations";

(C) in clause (iii), by striking "described in" and all that follows and inserting "in which support was collected during the fiscal year;";

(D) by striking clause (iv); and

(E) by redesignating clause (v) as clause (vii), and inserting after clause (iii) the following new clauses:

"(iv) the total amount of support collected during such fiscal year and distributed as current support;

"(v) the total amount of support collected during such fiscal year and distributed as arrearages;

"(vi) the total amount of support due and unpaid for all fiscal years; and".

(3) Section 452(a)(10)(G) (42 U.S.C. 652(a)(10)(G)) is amended by striking "on the use of Federal courts and".

(4) Section 452(a)(10) (42 U.S.C. 652(a)(10)) is amended—

(A) in subparagraph (H), by striking "and";

(B) in subparagraph (I), by striking the period and inserting "; and"; and

(C) by inserting after subparagraph (I) the following new subparagraph:

"(J) compliance, by State, with the standards established pursuant to subsections (h) and (i).".

(5) Section 452(a)(10) (42 U.S.C. 652(a)(10)) is amended by striking all that follows subparagraph (J), as added by paragraph (4).

(b) Effective Date.—The amendments made by subsection (a) shall be effective with respect to fiscal year 1996 and succeeding fiscal years.

CHAPTER 6—ESTABLISHMENT AND MODIFICATION OF SUPPORT ORDERS

SEC. 12351. SIMPLIFIED PROCESS FOR REVIEW AND ADJUSTMENT OF CHILD SUPPORT ORDERS.

Section 466(a)(10) (42 U.S.C. 666(a)(10)) is amended to read as follows:

"(10) Review and adjustment of support orders upon request.—Procedures under which the State shall review and adjust each support order being enforced under this part upon the request of either parent or the State if there is an assignment. Such procedures shall provide the following:

"(A) In general.—

"(i) 3-year cycle.—Except as provided in subparagraphs (B) and (C), the State shall review and, as appropriate, adjust the support order every 3 years, taking into account the best interests of the child involved.

"(ii) Methods of adjustment.—The State may elect to review and, if appropriate, adjust an order pursuant to clause (i) by—

"(I) reviewing and, if appropriate, adjusting the order in accordance with the guidelines established pursuant to section 467(a) if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines; or

"(II) applying a cost-of-living adjustment to the order in accordance with a formula developed by the State and permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 467(a).

"(iii) NO PROOF OF CHANGE IN CIRCUMSTANCES NECESSARY.—Any adjustment under this subparagraph (A) shall be made without a requirement for proof or showing of a change in circumstances.

"(B) AUTOMATED METHOD.—The State may use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under the threshold established by the State.

"(C) REQUEST UPON SUBSTANTIAL CHANGE IN CIRCUMSTANCES.—The State shall, at the request of either parent subject to such an order or of any State child support enforcement agency, review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 467(a) based upon a substantial change in the circumstances of either parent.

"(D) NOTICE OF RIGHT TO REVIEW.—The State shall provide notice not less than once every 3 years to the parents subject to such an order informing them of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.".

SEC. 12352. FURNISHING CONSUMER REPORTS FOR CERTAIN PURPOSES RELATING TO CHILD SUPPORT.

Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended by adding at the end the following new paragraphs:

"(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that—

"(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;

"(B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);

"(C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and

"(D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

"(5) To an agency administering a State plan under section 454 of the Social Security Act (42 U.S.C. 654) for use to set an initial or modified child support award.".

SEC. 12353. NONLIABILITY FOR FINANCIAL INSTITUTIONS PROVIDING FINANCIAL RECORDS TO STATE CHILD SUPPORT ENFORCEMENT AGENCIES IN CHILD SUPPORT CASES.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a financial institution shall not be liable under any Federal or State law to any person for disclosing any financial record of an individual to a State child support enforcement agency attempting to establish, modify, or enforce a child support obligation of such individual.

(b) PROHIBITION OF DISCLOSURE OF FINANCIAL RECORD OBTAINED BY STATE CHILD SUPPORT ENFORCEMENT AGENCY.—A State child support enforcement agency which obtains a financial record of an individual from a financial institution pursuant to subsection (a) may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation of such individual.

(c) CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE.—

(1) DISCLOSURE BY STATE OFFICER OR EMPLOYEE.—If any person knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b), such individual may bring a civil action for damages against such person in a district court of the United States.

(2) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this subsection with respect to any disclosure which results from a good faith, but erroneous, interpretation of subsection (b).

(3) DAMAGES.—In any action brought under paragraph (1), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(A) the greater of—

(i) $1,000 for each act of unauthorized disclosure of a financial record with respect to which such defendant is found liable; or

(ii) the sum of—

(I) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure; plus

(II) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages; plus

(B) the costs (including attorney's fees) of the action.

(d) DEFINITIONS.—For purposes of this section—

(1) FINANCIAL INSTITUTION.—The term "financial institution" means—

(A) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(B) an institution-affiliated party, as defined in section 3(u) of such Act (12 U.S.C. 1813(v));

(C) any Federal credit union or State credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), including an institution-affiliated party of such a credit union, as defined in section 206(r) of such Act (12 U.S.C. 1786(r)); and

(D) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the State.

(2) FINANCIAL RECORD.—The term "financial record" has the meaning given such term in section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401).

(3) STATE CHILD SUPPORT ENFORCEMENT AGENCY.—The term "State child support enforcement agency" means a State agency which administers a State program for establishing and enforcing child support obligations.

CHAPTER 7—ENFORCEMENT OF SUPPORT ORDERS

SEC. 12361. INTERNAL REVENUE SERVICE COLLECTION OF ARREARAGES.

(a) COLLECTION OF FEES.—Section 6305(a) of the Internal Revenue Code of 1986 (relating to collection of certain liability) is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting ", and";

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

"(5) no additional fee may be assessed for adjustments to an amount previously certified pursuant to such section 452(b) with respect to the same obligor."; and

(4) by striking "Secretary of Health, Education, and Welfare" each place it appears and inserting "Secretary of Health and Human Services".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective October 1, 1997.

SEC. 12362. AUTHORITY TO COLLECT SUPPORT FROM FEDERAL EMPLOYEES.

(a) CONSOLIDATION AND STREAMLINING OF AUTHORITIES.—Section 459 (42 U.S.C. 659) is amended to read as follows:

"SEC. 459. CONSENT BY THE UNITED STATES TO INCOME WITHHOLDING, GARNISHMENT, AND SIMILAR PROCEEDINGS FOR ENFORCEMENT OF CHILD SUPPORT AND ALIMONY OBLIGATIONS.

"(a) CONSENT TO SUPPORT ENFORCEMENT.—Notwithstanding any other provision of law (including section 207 of this Act and section 5301 of title 38, United States Code), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner

and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 466 and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

"(b) CONSENT TO REQUIREMENTS APPLICABLE TO PRIVATE PERSON.—With respect to notice to withhold income pursuant to subsection (a)(1) or (b) of section 466, or any other order or process to enforce support obligations against an individual (if the order or process contains or is accompanied by sufficient data to permit prompt identification of the individual and the moneys involved), each governmental entity specified in subsection (a) shall be subject to the same requirements as would apply if the entity were a private person, except as otherwise provided in this section.

"(c) DESIGNATION OF AGENT; RESPONSE TO NOTICE OR PROCESS—

"(1) DESIGNATION OF AGENT.—The head of each agency subject to this section shall—

"(A) designate an agent or agents to receive orders and accept service of process in matters relating to child support or alimony; and

"(B) annually publish in the Federal Register the designation of the agent or agents, identified by title or position, mailing address, and telephone number.

"(2) RESPONSE TO NOTICE OR PROCESS.—If an agent designated pursuant to paragraph (1) of this subsection receives notice pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 466, or is effectively served with any order, process, or interrogatory, with respect to an individual's child support or alimony payment obligations, the agent shall—

"(A) as soon as possible (but not later than 15 days) thereafter, send written notice of the notice or service (together with a copy of the notice or service) to the individual at the duty station or last-known home address of the individual;

"(B) within 30 days (or such longer period as may be prescribed by applicable State law) after receipt of a notice pursuant to such State procedures, comply with all applicable provisions of section 466; and

"(C) within 30 days (or such longer period as may be prescribed by applicable State law) after effective service of any other such order, process, or interrogatory, respond to the order, process, or interrogatory.

"(d) PRIORITY OF CLAIMS.—If a governmental entity specified in subsection (a) receives notice or is served with process, as provided in this section, concerning amounts owed by an individual to more than 1 person—

"(1) support collection under section 466(b) must be given priority over any other process, as provided in section 466(b)(7);

"(2) allocation of moneys due or payable to an individual among claimants under section 466(b) shall be governed by section 466(b) and the regulations prescribed under such section; and

"(3) such moneys as remain after compliance with paragraphs (1) and (2) shall be available to satisfy any other such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

"(e) NO REQUIREMENT TO VARY PAY CYCLES.—A governmental entity that is affected by legal process served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary its normal pay and disbursement cycle in order to comply with the legal process.

"(f) RELIEF FROM LIABILITY.—

"(1) Neither the United States, nor the government of the District of Columbia, nor any disbursing officer shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if the payment is made in accordance with this section and the regulations issued to carry out this section.

"(2) No Federal employee whose duties include taking actions necessary to comply with the requirements of subsection (a) with regard to any individual shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by the employee in connection with the carrying out of such actions.

"(g) REGULATIONS.—Authority to promulgate regulations for the implementation of this section shall, insofar as this section applies to moneys due from (or payable by)—

"(1) the United States (other than the legislative or judicial branches of the Federal Government) or the government of the District of Columbia, be vested in the President (or the designee of the President);

"(2) the legislative branch of the Federal Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

"(3) the judicial branch of the Federal Government, be vested in the Chief Justice of the United States (or the designee of the Chief Justice).

"(h) MONEYS SUBJECT TO PROCESS.—

"(1) IN GENERAL.—Subject to paragraph (2), moneys paid or payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section—

"(A) consist of—

"(i) compensation paid or payable for personal services of the individual, whether the compensation is denominated as wages, salary, commission, bonus, pay, allowances, or otherwise (including severance pay, sick pay, and incentive pay);

“(ii) periodic benefits (including a periodic benefit as defined in section 228(h)(3)) or other payments—

“(I) under the insurance system established by title II;

“(II) under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents’ or survivors’ benefits, or similar amounts payable on account of personal services performed by the individual or any other individual;

“(III) as compensation for death under any Federal program;

“(IV) under any Federal program established to provide ‘black lung’ benefits; or

“(V) by the Secretary of Veterans Affairs as pension, or as compensation for a service-connected disability or death; and

“(iii) worker’s compensation benefits paid under Federal or State law but

“(B) do not include any payment—

“(i) by way of reimbursement or otherwise, to defray expenses incurred by the individual in carrying out duties associated with the employment of the individual; or

“(ii) as allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, United States Code, as prescribed by the Secretaries concerned (defined by section 101(5) of such title) as necessary for the efficient performance of duty.

“(2) CERTAIN AMOUNTS EXCLUDED.—In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

“(A) are owed by the individual to the United States;

“(B) are required by law to be, and are, deducted from the remuneration or other payment involved, including Federal employment taxes, and fines and forfeitures ordered by court-martial;

“(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding);

“(D) are deducted as health insurance premiums;

“(E) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage); or

"(F) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

"(i) DEFINITIONS.—For purposes of this section—

"(1) UNITED STATES.—The term 'United States' includes any department, agency, or instrumentality of the legislative, judicial, or executive branch of the Federal Government, the United States Postal Service, the Postal Rate Commission, any Federal corporation created by an Act of Congress that is wholly owned by the Federal Government, and the governments of the territories and possessions of the United States.

"(2) CHILD SUPPORT.—The term 'child support', when used in reference to the legal obligations of an individual to provide such support, means amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief.

"(3) ALIMONY.—

"(A) IN GENERAL.—The term 'alimony', when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of the individual, and (subject to and in accordance with State law) includes separate maintenance, alimony pendente lite, maintenance, and spousal support, and includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

"(B) EXCEPTIONS.—Such term does not include—

"(i) any child support; or

"(ii) any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

"(4) PRIVATE PERSON.—The term 'private person' means a person who does not have sovereign or other special immunity or privilege which causes the person not to be subject to legal process.

"(5) LEGAL PROCESS.—The term 'legal process' means any writ, order, summons, or other similar process in the nature of garnishment—

"(A) which is issued by—

"(i) a court or an administrative agency of competent jurisdiction in any State, territory, or possession of the United States;

"(ii) a court or an administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or

"(iii) an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction or pursuant to State or local law; and

"(B) which is directed to, and the purpose of which is to compel, a governmental entity which holds moneys which are otherwise payable to an individual to make a payment from the moneys to another party in order to satisfy a legal obligation of the individual to provide child support or make alimony payments.".

(b) CONFORMING AMENDMENTS.—

(1) TO PART D OF TITLE IV.—Sections 461 and 462 (42 U.S.C. 661 and 662) are repealed.

(2) TO TITLE 5, UNITED STATES CODE.—Section 5520a of title 5, United States Code, is amended, in subsections (h)(2) and (i), by striking "sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662)" and inserting "section 459 of the Social Security Act (42 U.S.C. 659)".

(c) MILITARY RETIRED AND RETAINER PAY.—

(1) DEFINITION OF COURT.—Section 1408(a)(1) of title 10, United States Code, is amended—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(C) by adding after subparagraph (C) the following: new subparagraph

"(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.".

(2) DEFINITION OF COURT ORDER.—Section 1408(a)(2) of such title is amended—

(A) by inserting "or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p))," before "which—";

(B) in subparagraph (B)(i), by striking "(as defined in section 462(b) of the Social Security Act (42 U.S.C. 662(b)))" and inserting "(as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 662(i)(2)))"; and

(C) in subparagraph (B)(ii), by striking "(as defined in section 462(c) of the Social Security Act (42 U.S.C. 662(c)))" and inserting "(as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 662(i)(3)))".

(3) PUBLIC PAYEE.—Section 1408(d) of such title is amended—

(A) in the heading, by inserting "(OR FOR BENEFIT OF)" before "SPOUSE OR"; and

(B) in paragraph (1), in the 1st sentence, by inserting "(or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D)" before "in an amount sufficient".

(4) RELATIONSHIP TO PART D OF TITLE IV.—Section 1408 of such title is amended by adding at the end the following new subsection:

"(j) RELATIONSHIP TO OTHER LAWS.—In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act.".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective 6 months after the date of the enactment of this Act.

SEC. 12363. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OF MEMBERS OF THE ARMED FORCES.

(a) AVAILABILITY OF LOCATOR INFORMATION.—

(1) MAINTENANCE OF ADDRESS INFORMATION.—The Secretary of Defense shall establish a centralized personnel locator service that includes the address of each member of the Armed Forces under the jurisdiction of the Secretary. Upon request of the Secretary of Transportation, addresses for members of the Coast Guard shall be included in the centralized personnel locator service.

(2) TYPE OF ADDRESS.—

(A) RESIDENTIAL ADDRESS.—Except as provided in subparagraph (B), the address for a member of the Armed Forces shown in the locator service shall be the residential address of that member.

(B) DUTY ADDRESS.—The address for a member of the Armed Forces shown in the locator service shall be the duty address of that member in the case of a member—

(i) who is permanently assigned overseas, to a vessel, or to a routinely deployable unit; or

(ii) with respect to whom the Secretary concerned makes a determination that the member's residential address should not be disclosed due to national security or safety concerns.

(3) UPDATING OF LOCATOR INFORMATION.—Within 30 days after a member listed in the locator service establishes a new residential address (or a new duty address, in the case of a member covered by paragraph (2)(B)), the Secretary concerned shall update the locator service to indicate the new address of the member.

(4) AVAILABILITY OF INFORMATION.—The Secretary of Defense shall make information regarding the address of a member of the Armed Forces listed in the locator service available,

on request, to the Federal Parent Locator Service established under section 453 of the Social Security Act.

(b) FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS.—

(1) REGULATIONS.—The Secretary of each military department, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to facilitate the granting of leave to a member of the Armed Forces under the jurisdiction of that Secretary in a case in which—

(A) the leave is needed for the member to attend a hearing described in paragraph (2);

(B) the member is not serving in or with a unit deployed in a contingency operation (as defined in section 101 of title 10, United States Code); and

(C) the exigencies of military service (as determined by the Secretary concerned) do not otherwise require that such leave not be granted.

(2) COVERED HEARINGS.—Paragraph (1) applies to a hearing that is conducted by a court or pursuant to an administrative process established under State law, in connection with a civil action—

(A) to determine whether a member of the Armed Forces is a natural parent of a child; or

(B) to determine an obligation of a member of the Armed Forces to provide child support.

(3) DEFINITIONS.—For purposes of this subsection—

(A) The term "court" has the meaning given that term in section 1408(a) of title 10, United States Code.

(B) The term "child support" has the meaning given such term in section 459(i) of the Social Security Act (42 U.S.C. 659(i)).

(c) PAYMENT OF MILITARY RETIRED PAY IN COMPLIANCE WITH CHILD SUPPORT ORDERS.—

(1) DATE OF CERTIFICATION OF COURT ORDER.—Section 1408 of title 10, United States Code, as amended by section 362(c)(4) of this Act, is amended—

(A) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(B) by inserting after subsection (h) the following new subsection:

"(i) CERTIFICATION DATE.—It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.".

(2) PAYMENTS CONSISTENT WITH ASSIGNMENTS OF RIGHTS TO STATES.—Section 1408(d)(1) of such title is amended by inserting after the 1st sentence the following new sentence: "In the case of a spouse or former spouse who, pursuant to section 407(a)(4) of the Social Security Act (42 U.S.C. 607(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child sup-

port payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights.''.

(3) ARREARAGES OWED BY MEMBERS OF THE UNIFORMED SERVICES.—Section 1408(d) of such title is amended by adding at the end the following new paragraph:

''(6) In the case of a court order for which effective service is made on the Secretary concerned on or after the date of the enactment of this paragraph and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.''.

(4) PAYROLL DEDUCTIONS.—The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the 1st pay period that begins after such 30-day period.

SEC. 12364. VOIDING OF FRAUDULENT TRANSFERS.

Section 466 (42 U.S.C. 666), as amended by section 321 of this Act, is amended by adding at the end the following new subsection:

''(g) LAWS VOIDING FRAUDULENT TRANSFERS.—In order to satisfy section 454(20)(A), each State must have in effect—

''(1)(A) the Uniform Fraudulent Conveyance Act of 1981;

''(B) the Uniform Fraudulent Transfer Act of 1984; or

''(C) another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid payment to a child support creditor, which the Secretary finds affords comparable rights to child support creditors; and

''(2) procedures under which, in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must—

''(A) seek to void such transfer; or

''(B) obtain a settlement in the best interests of the child support creditor.''.

SEC. 12365. WORK REQUIREMENT FOR PERSONS OWING PAST-DUE CHILD SUPPORT.

(a) IN GENERAL.—Section 466(a) of the Social Security Act (42 U.S.C. 666(a)), as amended by sections 12315, 12317(a), and 12323 of this Act, is amended by adding at the end the following new paragraph:

''(15) PROCEDURES TO ENSURE THAT PERSONS OWING PAST-DUE SUPPORT WORK OR HAVE A PLAN FOR PAYMENT OF SUCH SUPPORT.—

''(A) IN GENERAL.—Procedures under which the State has the authority, in any case in which an individual owes past-due support with respect to a child receiving assistance under a State program funded under part A, to seek a court order that requires the individual to—

''(i) pay such support in accordance with a plan approved by the court, or, at the option of the State, a

plan approved by the State agency administering the State program under this part; or

"(ii) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 406(d)) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

"(B) PAST-DUE SUPPORT DEFINED.—For purposes of subparagraph (A), the term 'past-due support' means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.".

(b) CONFORMING AMENDMENT.—The flush paragraph at the end of section 466(a) (42 U.S.C.666(a)) is amended by striking "and (7)" and inserting "(7), and (15)".

SEC. 12366. DEFINITION OF SUPPORT ORDER.

Section 453 (42 U.S.C. 653) as amended by sections 12316 and 12345(b) of this Act, is amended by adding at the end the following new subsection:

"(p) SUPPORT ORDER DEFINED.—As used in this part, the term 'support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.".

SEC. 12367. REPORTING ARREARAGES TO CREDIT BUREAUS.

Section 466(a)(7) (42 U.S.C. 666(a)(7)) is amended to read as follows:

"(7) REPORTING ARREARAGES TO CREDIT BUREAUS.—

"(A) IN GENERAL.—Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

"(B) SAFEGUARDS.—Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported—

"(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

"(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).".

SEC. 12368. LIENS.

Section 466(a)(4) (42 U.S.C. 666(a)(4)) is amended to read as follows:

"(4) LIENS.—Procedures under which—

"(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

"(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, without registration of the underlying order.".

SEC. 12369. STATE LAW AUTHORIZING SUSPENSION OF LICENSES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 12315, 12317(a), 12323, and 12365 of this Act, is amended by adding at the end the following:

"(16) AUTHORITY TO WITHHOLD OR SUSPEND LICENSES.—Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.".

SEC. 12370. INTERNATIONAL CHILD SUPPORT ENFORCEMENT.

(a) AUTHORITY FOR INTERNATIONAL AGREEMENTS.—Part D of title IV, as amended by section 362(a) of this Act, is amended by adding after section 459 the following new section:

"SEC. 459A. INTERNATIONAL CHILD SUPPORT ENFORCEMENT.

"(a) AUTHORITY FOR DECLARATIONS.—

"(1) DECLARATION.—The Secretary of State, with the concurrence of the Secretary of Health and Human Services, is authorized to declare any foreign country (or a political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to obligees who are residents of the United States, and such procedures are substantially in conformity with the standards prescribed under subsection (b).

"(2) REVOCATION.—A declaration with respect to a foreign country made pursuant to paragraph (1) may be revoked if the Secretaries of State and Health and Human Services determine that—

"(A) the procedures established by the foreign nation regarding the establishment and enforcement of duties of support have been so changed, or the foreign nation's implementation of such procedures is so unsatisfactory, that such procedures do not meet the criteria for such a declaration; or

"(B) continued operation of the declaration is not consistent with the purposes of this part.

"(3) FORM OF DECLARATION.—A declaration under paragraph (1) may be made in the form of an international agree-

ment, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.

"(b) STANDARDS FOR FOREIGN SUPPORT ENFORCEMENT PROCEDURES.—

"(1) MANDATORY ELEMENTS.—Child support enforcement procedures of a foreign country which may be the subject of a declaration pursuant to subsection (a)(1) shall include the following elements:

"(A) The foreign country (or political subdivision thereof) has in effect procedures, available to residents of the United States—

"(i) for establishment of paternity, and for establishment of orders of support for children and custodial parents; and

"(ii) for enforcement of orders to provide support to children and custodial parents, including procedures for collection and appropriate distribution of support payments under such orders.

"(B) The procedures described in subparagraph (A), including legal and administrative assistance, are provided to residents of the United States at no cost.

"(C) An agency of the foreign country is designated as a Central Authority responsible for—

"(i) facilitating child support enforcement in cases involving residents of the foreign nation and residents of the United States; and

"(ii) ensuring compliance with the standards established pursuant to this subsection.

"(2) ADDITIONAL ELEMENTS.—The Secretary of Health and Human Services and the Secretary of State, in consultation with the States, may establish such additional standards as may be considered necessary to further the purposes of this section.

"(c) DESIGNATION OF UNITED STATES CENTRAL AUTHORITY.—It shall be the responsibility of the Secretary of Health and Human Services to facilitate child support enforcement in cases involving residents of the United States and residents of foreign nations that are the subject of a declaration under this section, by activities including—

"(1) development of uniform forms and procedures for use in such cases;

"(2) notification of foreign reciprocating countries of the State of residence of individuals sought for support enforcement purposes, on the basis of information provided by the Federal Parent Locator Service; and

"(3) such other oversight, assistance, and coordination activities as the Secretary may find necessary and appropriate.

"(d) EFFECT ON OTHER LAWS.—States may enter into reciprocal arrangements for the establishment and enforcement of child support obligations with foreign countries that are not the subject of a declaration pursuant to subsection (a), to the extent consistent with Federal law.".

(b) STATE PLAN REQUIREMENT.—Section 454 (42 U.S.C. 654), as amended by sections 12301(b), 12303(a), 12312(b), 12313(a), 12333, and 12343(b) of this Act, is amended—

(1) by striking "and" at the end of paragraph (29);

(2) by striking the period at the end of paragraph (30) and inserting "; and"; and

(3) by adding after paragraph (30) the following new paragraph:

"(31)(A) provide that any request for services under this part by a foreign reciprocating country or a foreign country with which the State has an arrangement described in section 459A(d)(2) shall be treated as a request by a State;

"(B) provide, at State option, notwithstanding paragraph (4) or any other provision of this part, for services under the plan for enforcement of a spousal support order not described in paragraph (4)(B) entered by such a country (or subdivision); and

"(C) provide that no applications will be required from, and no costs will be assessed for such services against, the foreign reciprocating country or foreign obligee (but costs may at State option be assessed against the obligor).".

SEC. 12371. FINANCIAL INSTITUTION DATA MATCHES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 12315, 12317(a), 12323, 12365, and 12369 of this Act, is amended by adding at the end the following new paragraph:

"(17) FINANCIAL INSTITUTION DATA MATCHES.—

"(A) IN GENERAL.—Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State—

"(i) to develop and operate, in coordination with such financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

"(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

"(B) REASONABLE FEES.—The State agency may pay a reasonable fee to a financial institution for conducting the data match provided for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

"(C) LIABILITY.—A financial institution shall not be liable under any Federal or State law to any person—

"(i) for any disclosure of information to the State agency under subparagraph (A)(i);

"(ii) for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy issued by the State agency as provided for in subparagraph (A)(ii); or

"(iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) FINANCIAL INSTITUTION.—The term 'financial institution' means any Federal or State commercial savings bank, including savings association or cooperative bank, Federal- or State-chartered credit union, benefit association, insurance company, safe deposit company, money-market mutual fund, or any similar entity authorized to do business in the State; and

"(ii) ACCOUNT.—The term 'account' means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.".

SEC. 12372. ENFORCEMENT OF ORDERS AGAINST PATERNAL OR MATERNAL GRANDPARENTS IN CASES OF MINOR PARENTS.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 12315, 12317(a), 12323, 12365, 12369, and 12371 of this Act, is amended by adding at the end the following new paragraph:

"(18) ENFORCEMENT OF ORDERS AGAINST PATERNAL OR MATERNAL GRANDPARENTS.—Procedures under which, at the State's option, any child support order enforced under this part with respect to a child of minor parents, if the custodial parents of such child is receiving assistance under the State program under part A, shall be enforceable, jointly and severally, against the parents of the noncustodial parents of such child.".

CHAPTER 8—MEDICAL SUPPORT

SEC. 12376. CORRECTION TO ERISA DEFINITION OF MEDICAL CHILD SUPPORT ORDER.

(a) IN GENERAL.—Section 609(a)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(2)(B)) is amended—

(1) by striking "issued by a court of competent jurisdiction";

(2) by striking the period at the end of clause (ii) and inserting a comma; and

(3) by adding, after and below clause (ii), the following:

"if such judgment, decree, or order (I) is issued by a court of competent jurisdiction or (II) is issued through an administrative process established under State law and has the force and effect of law under applicable State law.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1996.—Any amendment to a plan required to be made by an amendment made by this section shall not be required to be made before the 1st plan year beginning on or after January 1, 1996, if—

(A) during the period after the date before the date of the enactment of this Act and before such 1st plan year, the plan is operated in accordance with the requirements of the amendments made by this section; and

(B) such plan amendment applies retroactively to the period after the date before the date of the enactment of this Act and before such 1st plan year.

A plan shall not be treated as failing to be operated in accordance with the provisions of the plan merely because it operates in accordance with this paragraph.

SEC. 12377. ENFORCEMENT OF ORDERS FOR HEALTH CARE COVERAGE.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 12315, 12317(a), 12323, 12365, 12369, 12371, and 12372 of this Act, is amended by adding at the end the following new paragraph:

''(19) HEALTH CARE COVERAGE.—Procedures under which all child support orders enforced pursuant to this part shall include a provision for the health care coverage of the child, and in the case in which a noncustodial parent provides such coverage and changes employment, and the new employer provides health care coverage, the State agency shall transfer notice of the provision to the employer, which notice shall operate to enroll the child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice.''.

CHAPTER 9—ENHANCING RESPONSIBILITY AND OPPORTUNITY FOR NON-RESIDENTIAL PARENTS

SEC. 12381. GRANTS TO STATES FOR ACCESS AND VISITATION PROGRAMS.

Part D of title IV (42 U.S.C. 651–669) is amended by adding at the end the following:

''SEC. 469A. GRANTS TO STATES FOR ACCESS AND VISITATION PROGRAMS.

''(a) IN GENERAL.—The Administration for Children and Families shall make grants under this section to enable States to establish and administer programs to support and facilitate noncustodial parents' access to and visitation of their children, by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements.

''(b) AMOUNT OF GRANT.—The amount of the grant to be made to a State under this section for a fiscal year shall be an amount equal to the lesser of—

''(1) 90 percent of State expenditures during the fiscal year for activities described in subsection (a); or

''(2) the allotment of the State under subsection (c) for the fiscal year.

''(c) ALLOTMENTS TO STATES.—

''(1) IN GENERAL.—The allotment of a State for a fiscal year is the amount that bears the same ratio to the amount appropriated for grants under this section for the fiscal year as the

number of children in the State living with only 1 biological parent bears to the total number of such children in all States.

"(2) MINIMUM ALLOTMENT.—The Administration for Children and Families shall adjust allotments to States under paragraph (1) as necessary to ensure that no State is allotted less than—

"(A) $50,000 for fiscal year 1996 or 1997; or

"(B) $100,000 for any succeeding fiscal year.

"(d) NO SUPPLANTATION OF STATE EXPENDITURES FOR SIMILAR ACTIVITIES.—A State to which a grant is made under this section may not use the grant to supplant expenditures by the State for activities specified in subsection (a), but shall use the grant to supplement such expenditures at a level at least equal to the level of such expenditures for fiscal year 1995.

"(e) STATE ADMINISTRATION.—Each State to which a grant is made under this section—

"(1) may administer State programs funded with the grant, directly or through grants to or contracts with courts, local public agencies, or non-profit private entities;

"(2) shall not be required to operate such programs on a statewide basis; and

"(3) shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.".

CHAPTER 10—EFFECT OF ENACTMENT

SEC. 12391. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise specifically provided (but subject to subsections (b) and (c))—

(1) the provisions of this subtitle requiring the enactment or amendment of State laws under section 466 of the Social Security Act, or revision of State plans under section 454 of such Act, shall be effective with respect to periods beginning on and after October 1, 1996; and

(2) all other provisions of this subtitle shall become effective upon the date of the enactment of this Act.

(b) GRACE PERIOD FOR STATE LAW CHANGES.—The provisions of this subtitle shall become effective with respect to a State on the later of—

(1) the date specified in this subtitle, or

(2) the effective date of laws enacted by the legislature of such State implementing such provisions,

but in no event later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(c) GRACE PERIOD FOR STATE CONSTITUTIONAL AMENDMENT.—A State shall not be found out of compliance with any requirement enacted by this subtitle if the State is unable to so comply without amending the State constitution until the earlier of—

(1) 1 year after the effective date of the necessary State constitutional amendment; or

(2) 5 years after the date of the enactment of this Act.

Subtitle D—Restricting Welfare and Public Benefits for Aliens

CHAPTER 1—ELIGIBILITY FOR FEDERAL BENEFITS

SEC. 12401. ALIENS WHO ARE NOT QUALIFIED ALIENS INELIGIBLE FOR FEDERAL PUBLIC BENEFITS.

(a) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subsection (b), an alien who is not a qualified alien (as defined section 12431) is not eligible for any Federal public benefit (as defined in subsection (c)).

(b) EXCEPTIONS.—Subsection (a) shall not apply with respect to the following Federal public benefits:

(1) Emergency medical services under title XIX or XXI of the Social Security Act.

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3)(A) Public health assistance for immunizations.

(B) Public health assistance for testing and treatment of a serious communicable disease if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.

(4) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(5) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949, or any assistance under section 306C of the Consolidated Farm and Rural Development Act, to the extent that the alien is receiving such a benefit on the date of the enactment of this Act.

(c) FEDERAL PUBLIC BENEFIT DEFINED.—

(1) Except as provided in paragraph (2), for purposes of this subtitle the term "Federal public benefit" means a Federal public benefit providing direct spending for—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States; or

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State.

SEC. 12402. LIMITED ELIGIBILITY OF CERTAIN QUALIFIED ALIENS FOR CERTAIN FEDERAL PROGRAMS.

(a) LIMITED ELIGIBILITY FOR SPECIFIED FEDERAL PROGRAMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 12431) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) EXCEPTIONS.—

(A) TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.—Paragraph (1) shall not apply to an alien until 5 years after the date—

(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

(ii) an alien is granted asylum under section 208 of such Act; or

(iii) an alien's deportation is withheld under section 243(h) of such Act.

(B) CERTAIN PERMANENT RESIDENT ALIENS.—Paragraph (1) shall not apply to an alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii)(I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, and (II) did not receive any Federal means-tested public benefit (as defined in section 12403(c)) during any such quarter.

(C) VETERAN AND ACTIVE DUTY EXCEPTION.—Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii).

(D) TRANSITION FOR ALIENS CURRENTLY RECEIVING BENEFITS.—Paragraph (1) shall apply to the eligibility of an alien for a program for months beginning on or after January 1, 1997, if, on the date of the enactment of this Act, the alien is lawfully residing in any State and is re-

ceiving benefits under such program on the date of the enactment of this Act.

(3) SPECIFIED FEDERAL PROGRAM DEFINED.—For purposes of this subtitle, the term "specified Federal program" means any of the following:

(A) SSI.—The supplemental security income program under title XVI of the Social Security Act.

(B) FOOD STAMPS.—The food stamp program as defined in section 3(h) of the Food Stamp Act of 1977.

(b) LIMITED ELIGIBILITY FOR DESIGNATED FEDERAL PROGRAMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as provided in section 12403 and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in section 12431) for any designated Federal program (as defined in paragraph (3)).

(2) EXCEPTIONS.—Qualified aliens under this paragraph shall be eligible for any designated Federal program.

(A) TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.—

(i) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act until 5 years after the date of an alien's entry into the United States.

(ii) An alien who is granted asylum under section 208 of such Act until 5 years after the date of such grant of asylum.

(iii) An alien whose deportation is being withheld under section 243(h) of such Act until 5 years after such withholding.

(B) CERTAIN PERMANENT RESIDENT ALIENS.—An alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii)(I) has worked 40 qualifying quarters of coverage to be a fully insured individual for old-age retirement benefits under title II of the Social Security Act, (II) did not receive any Federal means-tested public benefit (as defined in section 12403(c)) during any such quarter, and (III) at the time of application is otherwise eligible for such benefits.

(C) VETERAN AND ACTIVE DUTY EXCEPTION.—An alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii).

(D) TRANSITION FOR THOSE CURRENTLY RECEIVING BENEFITS.—An alien who on the date of the enactment of this Act is lawfully residing in any State and is receiving

benefits under such program on the date of the enactment of this Act shall continue to be eligible to receive such benefits until January 1, 1997.

(3) DESIGNATED FEDERAL PROGRAM DEFINED.—For purposes of this subtitle, the term "designated Federal program" means any of the following:

(A) TEMPORARY ASSISTANCE FOR NEEDY FAMILIES.—The program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act.

(B) SOCIAL SERVICES BLOCK GRANT.—The program of block grants to States for social services under title XX of the Social Security Act.

(C) MEDICAID AND MEDIGRANT.—The program of medical assistance under title XIX and XXI of the Social Security Act.

SEC. 12403. FIVE-YEAR LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR FEDERAL MEANS-TESTED PUBLIC BENEFIT.

(a) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subsection (b), an alien who is a qualified alien (as defined in section 12431) and who enters the United States on or after the date of the enactment of this Act is not eligible for any Federal means-tested public benefit (as defined in subsection (c)) for a period of five years beginning on the date of the alien's entry into the United States with a status within the meaning of the term "qualified alien".

(b) EXCEPTIONS.—The limitation under subsection (a) shall not apply to the following aliens:

(1) EXCEPTION FOR REFUGEES AND ASYLEES.—

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act.

(B) An alien who is granted asylum under section 208 of such Act.

(C) An alien whose deportation is being withheld under section 243(h) of such Act.

(2) VETERAN AND ACTIVE DUTY EXCEPTION.—An alien who is lawfully residing in any State and is—

(A) a veteran (as defined in section 101 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage,

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B).

(c) FEDERAL MEANS-TESTED PUBLIC BENEFIT DEFINED.—

(1) Except as provided in paragraph (2), for purposes of this subtitle, the term "Federal means-tested public benefit" means a Federal public benefit providing direct spending (including cash, medical, housing, and food assistance and social services) by the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the

basis of income, resources, or financial need of the individual, household, or unit.

(2) Such term does not include the following:

(A) Emergency medical services under title XIX or XXI of the Social Security Act.

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Assistance or benefits under the National School Lunch Act.

(D) Assistance or benefits under the Child Nutrition Act of 1966.

(E)(i) Public health assistance for immunizations.

(ii) Public health assistance for testing and treatment of a serious communicable disease if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.

(F) Payments for foster care and adoption assistance under part B of title IV of the Social Security Act for a child who would, in the absence of subsection (a), be eligible to have such payments made on the child's behalf under such part, but only if the foster or adoptive parent or parents of such child are not described under subsection (a).

(G) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(H) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965.

(I) Means-tested programs under the Elementary and Secondary Education Act of 1965.

CHAPTER 2—ATTRIBUTION OF INCOME AND AFFIDAVITS OF SUPPORT

SEC. 12421. ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIEN.

(a) IN GENERAL.—Notwithstanding any other provision of law and except as provided in subsection (c), in determining the eligibility and the amount of benefits of an alien for any means-tested public benefits program (as defined in subsection (e)) the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act (as added by section 12422) in behalf of such alien.

(2) The income and resources of the spouse (if any) of the person.

(b) APPLICATION.—Subsection (a) shall apply with respect to an alien until such time as the alien achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act.

(c) EXCEPTIONS.—Subsection (a) shall not apply with respect to the following Federal public benefits:

(1) Emergency medical services under title XIX or XXI of the Social Security Act.

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Assistance or benefits under the National School Lunch Act.

(4) Assistance or benefits under the Child Nutrition Act of 1966.

(5)(A) Public health assistance for immunizations.

(B) Public health assistance for testing and treatment of a serious communicable disease if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.

(6) Payments for foster care and adoption assistance under part B of title IV of the Social Security Act for a child who would, in the absence of subsection (a), be eligible to have such payments made on the child's behalf under such part, but only if the foster or adoptive parent or parents of such child are not described under subsection (a).

(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(8) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965.

(d) REVIEW OF INCOME AND RESOURCES OF ALIEN UPON REAPPLICATION.—Whenever an alien is required to reapply for benefits under any means-tested public benefits program, the applicable agency shall review the income and resources attributed to the alien under subsection (a).

(e) MEANS-TESTED PUBLIC BENEFITS PROGRAM DEFINED.—The term "means-tested public benefits program" means a program of Federal public benefits providing direct spending (including cash, medical, housing, and food assistance and social services) by the Federal government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit.

(f) APPLICATION.—

(1) If on the date of the enactment of this Act, a means-tested public benefits program attributes a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any

such determination beginning on the day after the date of the enactment of this Act.

(2) If on the date of the enactment of this Act, a means-tested public benefits program does not attribute a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning 180 days after the date of the enactment of this Act.

SEC. 12422. REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act is amended by inserting after section 213 the following new section:

"REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT

"SEC. 213A. (a) ENFORCEABILITY.—(1) No affidavit of support may be accepted by the Attorney General or by any consular officer to establish that an alien is not excludable as a public charge under section 212(a)(4) unless such affidavit is executed as a contract—

"(A) which is legally enforceable against the sponsor by the sponsored alien, the Federal Government, and by any State (or any political subdivision of such State) which provides any means-tested public benefits program, but not later than 10 years after the alien last receives any such benefit;

"(B) in which the sponsor agrees to financially support the alien, so that the alien will not become a public charge; and

"(C) in which the sponsor agrees to submit to the jurisdiction of any Federal or State court for the purpose of actions brought under subsection (e)(2).

"(2) A contract under paragraph (1) shall be enforceable with respect to benefits provided to the alien until such time as the alien achieves United States citizenship through naturalization pursuant to chapter 2 of title III.

"(b) FORMS.—Not later than 90 days after the date of enactment of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Health and Human Services, shall formulate an affidavit of support consistent with the provisions of this section.

"(c) REMEDIES.—Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of title 28, United States Code, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section in accordance with the provisions of subchapter II of chapter 37 of title 31, United States Code.

"(d) NOTIFICATION OF CHANGE OF ADDRESS.—

"(1) IN GENERAL.—The sponsor shall notify the Attorney General and the State in which the sponsored alien is currently resident within 30 days of any change of address of the sponsor during the period specified in subsection (a)(2).

"(2) PENALTY.—Any person subject to the requirement of paragraph (1) who fails to satisfy such requirement shall be subject to a civil penalty of—

"(A) not less than $250 or more than $2,000, or

"(B) if such failure occurs with knowledge that the alien has received any means-tested public benefit, not less than $2,000 or more than $5,000.

"(e) REIMBURSEMENT OF GOVERNMENT EXPENSES.—(1)(A) Upon notification that a sponsored alien has received any benefit under any means-tested public benefits program, the appropriate Federal, State, or local official shall request reimbursement by the sponsor in the amount of such assistance.

"(B) The Attorney General, in consultation with the Secretary of Health and Human Services, shall prescribe such regulations as may be necessary to carry out subparagraph (A).

"(2) If within 45 days after requesting reimbursement, the appropriate Federal, State, or local agency has not received a response from the sponsor indicating a willingness to commence payments, an action may be brought against the sponsor pursuant to the affidavit of support.

"(3) If the sponsor fails to abide by the repayment terms established by such agency, the agency may, within 60 days of such failure, bring an action against the sponsor pursuant to the affidavit of support.

"(4) No cause of action may be brought under this subsection later than 10 years after the alien last received any benefit under any means-tested public benefits program.

"(5) If, pursuant to the terms of this subsection, a Federal, State, or local agency requests reimbursement from the sponsor in the amount of assistance provided, or brings an action against the sponsor pursuant to the affidavit of support, the appropriate agency may appoint or hire an individual or other person to act on behalf of such agency acting under the authority of law for purposes of collecting any moneys owed. Nothing in this subsection shall preclude any appropriate Federal, State, or local agency from directly requesting reimbursement from a sponsor for the amount of assistance provided, or from bringing an action against a sponsor pursuant to an affidavit of support.

"(f) DEFINITIONS.—For the purposes of this section—

"(1) SPONSOR.—The term 'sponsor' means an individual who—

"(A) is a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;

"(B) is 18 years of age or over;

"(C) is domiciled in any State; and

"(D) is the person petitioning for the admission of the alien under section 204.

"(2) MEANS-TESTED PUBLIC BENEFITS PROGRAM DEFINED.—The term 'means-tested public benefits program' means a program of Federal public benefits providing direct spending (including cash, medical, housing, and food assistance and social services) by the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits,

or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit.".

(b) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 213 the following:

"Sec. 213A. Requirements for sponsor's affidavit of support.".

(c) EFFECTIVE DATE.—Subsection (a) of section 213A of the Immigration and Nationality Act, as inserted by subsection (a) of this section, shall apply to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days (and not later than 90 days) after the date the Attorney General formulates the form for such affidavits under subsection (b) of such section.

(d) BENEFITS NOT SUBJECT TO REIMBURSEMENT.—Requirements for reimbursement by a sponsor for benefits provided to a sponsored alien pursuant to an affidavit of support under section 213A of the Immigration and Nationality Act shall not apply with respect to the following:

(1) Emergency medical services under title XIX or XXI of the Social Security Act.

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Assistance or benefits under the National School Lunch Act.

(4) Assistance or benefits under the Child Nutrition Act of 1966.

(5)(A) Public health assistance for immunizations.

(B) Public health assistance for testing and treatment of a serious communicable disease if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.

(6) Payments for foster care and adoption assistance under part B of title IV of the Social Security Act for a child who would, in the absence of subsection (a), be eligible to have such payments made on the child's behalf under such part, but only if the foster or adoptive parent or parents of such child are not described under subsection (a).

(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(8) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965.

SEC. 12423. COSIGNATURE OF ALIEN STUDENT LOANS.

Section 484(b) of the Higher Education Act of 1965 (20 U.S.C. 1091(b)) is amended by adding at the end the following new paragraph:

"(6) Notwithstanding sections 427(a)(2)(C), 428B(a), 428C(b)(4)(A), and 464(c)(1)(E), a student who is an alien lawfully admitted for permanent residence under the Immigration and Nationality Act shall not be eligible for a loan under this title unless the loan is endorsed and cosigned by the alien's sponsor under section 213A of the Immigration and Nationality Act or by another individual who is a United States citizen.".

CHAPTER 3—GENERAL PROVISIONS

SEC. 12431. DEFINITIONS.

(a) IN GENERAL.—Except as otherwise provided in this subtitle, the terms used in this subtitle have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act.

(b) QUALIFIED ALIEN.—For purposes of this subtitle, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,

(2) an alien who is granted asylum under section 208 of such Act,

(3) a refugee who is admitted to the United States under section 207 of such Act,

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act, or

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980.

SEC. 12432. REAPPLICATION FOR SSI BENEFITS.

(a) APPLICATION AND NOTICE.—Notwithstanding any other provision of law, in the case of an individual who is receiving supplemental security income benefits under title XVI of the Social Security Act as of the date of the enactment of this Act and whose eligibility for such benefits would terminate by reason of the application of section 12402(a)(2)(D), the Commissioner of Social Security shall so notify the individual not later than 90 days after the date of the enactment of this Act.

(b) REAPPLICATION.—

(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, each individual notified pursuant to subsection (a) who desires to reapply for benefits under title XVI of the Social Security Act shall reapply to the Commissioner of Social Security.

(2) DETERMINATION OF ELIGIBILITY.—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Social Security shall determine the eligibility of each individual who reapplies for benefits under paragraph (1) pursuant to the procedures of such title XVI.

SEC. 12433. STATUTORY CONSTRUCTION.

(a) LIMITATION.—

(1) Nothing in this subtitle may be construed as an entitlement or a determination of an individual's eligibility or fulfillment of the requisite requirements for any Federal, State, or

local governmental program, assistance, or benefits. For purposes of this subtitle, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage.

(2) Nothing in this subtitle may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under Plyler v. Doe (457 U.S. 202)(1982).

(b) NOT APPLICABLE TO FOREIGN ASSISTANCE.—This subtitle does not apply to any Federal, State, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General.

(c) SEVERABILITY.—If any provision of this subtitle or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this subtitle and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Subtitle E—Teaching Hospital and Graduate Medical Education Trust Fund

CHAPTER 1—TRUST FUND

SEC. 12501. ESTABLISHMENT OF FUND; PAYMENTS TO TEACHING HOSPITALS.

The Social Security Act (42 U.S.C. 300 et seq.) is amended by adding after title XXI the following title:

"TITLE XXII—TEACHING HOSPITAL AND GRADUATE MEDICAL EDUCATION TRUST FUND

"TABLE OF CONTENTS OF TITLE

"PART A—ESTABLISHMENT OF FUND

"SEC. 2201. ESTABLISHMENT OF FUND.

"(a) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the Teaching Hospital and Graduate Medical Education Trust Fund (in this title referred to as the 'Fund'), consisting of amounts appropriated to the Fund in subsections (d), (f)(3), and (g), and amounts transferred to the Fund under section 1886(j). Amounts in the Fund are available until expended.

"(b) EXPENDITURES FROM FUND.—Amounts in the Fund are available to the Secretary for making payments under section 2211.

"(c) ACCOUNTS IN FUND.—There are established within the Fund the following accounts:

"(1) The General MedicarePlus Incentive Account.

"(2) The General Indirect-Costs Medical Education Account.

"(3) The General Direct-Costs Medical Education Account.

"(4) The Medicare Indirect-Costs Medical Education Account.

"(5) The Medicare Direct-Costs Medical Education Account.

"(d) GENERAL TRANSFERS TO FUND.—

"(1) IN GENERAL.—For fiscal year 1997 and each subsequent fiscal year, there are appropriated to the Fund (effective on the date specified in paragraph (2)), out of any money in the Treasury not otherwise appropriated, the following amounts (as applicable to the fiscal year involved):

"(A) For fiscal year 1997, $1,100,000,000.

"(B) For fiscal year 1998, $1,300,000,000.

"(C) For fiscal year 1999, $2,000,000,000.

"(D) For fiscal year 2000, $2,600,000,000.

"(E) For fiscal year 2001, $3,100,000,000.

"(F) For fiscal year 2002, $3,400,000,000.

"(G) For fiscal year 2003 and each subsequent fiscal year, the greater of the amount appropriated for the preceding fiscal year or an amount equal to the product of—

"(i) the amount appropriated for the preceding fiscal year; and

"(ii) 1 plus the percentage increase in the nominal gross domestic product for the one-year period ending upon July 1 of such preceding fiscal year.

"(2) EFFECTIVE DATE FOR ANNUAL APPROPRIATION.—For purposes of paragraph (1), the date specified in this paragraph for a fiscal year is the first day of the fiscal year.

"(3) ALLOCATION FOR GENERAL MEDICAREPLUS INCENTIVE ACCOUNT.—Of the amount appropriated in paragraph (1) for a fiscal year, there shall be allocated to the General MedicarePlus Incentive Account the following percentage (as applicable to the fiscal year involved):

"(A) For fiscal year 1997, 20 percent.

"(B) For fiscal year 1998, 30 percent.

"(C) For fiscal year 1999, 40 percent.

"(D) For fiscal year 2000 and each subsequent fiscal year, 50 percent.

"(4) ALLOCATIONS FOR GENERAL MEDICAL EDUCATION ACCOUNTS.—

"(A) IN GENERAL.—Of the amount appropriated in paragraph (1) for a fiscal year and remaining after the allocation required in paragraph (3) for the year has been made—

"(i) there shall be allocated to the General Indirect-Costs Medical Education Account the percentage determined under subparagraph (B)(ii); and

"(ii) there shall be allocated to the General Direct-Costs Medical Education Account the percentage determined under subparagraph (B)(iii).

"(B) DETERMINATION OF FIXED PERCENTAGES.—The Secretary of Health and Human Services, acting through the Administrator of the Health Care Financing Administration, shall determine the following:

"(i) The total amount of payments that were made under subsections (d)(5)(B) and (h) of section 1886 for fiscal year 1994.

"(ii) The percentage of such total that was constituted by payments under subsection (d)(5)(B) of such section.

"(iii) The percentage of such total that was constituted by payments under subsection (h) of such section.

"(e) TRANSFERS FROM MEDICARE PROGRAM.—Amounts shall, in accordance with section 1886(j), be transferred to the Fund from the trust funds established under parts A and B of title XVIII.

"(f) INVESTMENT.—

"(1) IN GENERAL.—The Secretary of the Treasury shall invest such amounts of the Fund as such Secretary determines are not required to meet current withdrawals from the Fund. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

"(2) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

"(3) AVAILABILITY OF INCOME.—Any interest derived from obligations acquired by the Fund, and proceeds from any sale or redemption of such obligations, are hereby appropriated to the Fund.

"(g) MONETARY GIFTS TO FUND.—There are appropriated to the Fund such amounts as may be unconditionally donated to the Federal Government as gifts to the Fund.

"PART B—PAYMENTS TO TEACHING HOSPITALS

"Subpart 1—Requirement of Payments

"SEC. 2211. FORMULA PAYMENTS TO TEACHING HOSPITALS.

"(a) IN GENERAL.—Subject to subsection (d), in the case of each teaching hospital that in accordance with subsection (b) submits to the Secretary a payment document for fiscal year 1997 or any subse-

quent fiscal year, the Secretary shall make payments for the year to the teaching hospital for the direct and indirect costs of operating approved medical residency training programs. Such payments shall be made from the Fund, and the total of the payments to the hospital for the fiscal year shall equal the sum of the following:

"(1) An amount determined under section 2221 (relating to the MedicarePlus program).

"(2) An amount determined under section 2231 (relating to the indirect costs of graduate medical education).

"(3) An amount determined under section 2241 (relating to the direct costs of graduate medical education).

"(b) PAYMENT DOCUMENT.—For purposes of subsection (a), a payment document is a document containing such information as may be necessary for the Secretary to make payments under such subsection to a teaching hospital during a fiscal year. The document is submitted in accordance with this subsection if the document is submitted not later than the date specified by the Secretary, and the document is in such form and is made in such manner as the Secretary may require. This subsection is subject to section 2212.

"(c) PERIODIC PAYMENTS.—Payments under subsection (a) for a teaching hospital for a fiscal year shall be made periodically, at such intervals and in such amounts as the Secretary determines to be appropriate (subject to applicable Federal law regarding Federal payments).

"(d) SPECIAL RULES.—

"(1) PAYMENTS TO CONSORTIA OF PROVIDERS.—In the case of payments under subsection (a) that are determined under section 2241:

"(A) The requirement under such subsection to make the payments to teaching hospitals is subject to the authority of the Secretary under section 2243(a) to make payments to qualifying consortia.

"(B) If the Secretary authorizes payments to a consortium under section 2243(a), subsections (a) and (b) of this section (other than subsection (a)(2)) apply to the consortium to the same extent and in the same manner as the subsections apply to teaching hospitals.

"(2) HOSPITALS IN STATES WITH CERTAIN DEMONSTRATION PROJECTS.—Paragraph (2) of subsection (a) is subject to section 2232(d)(1)(B), and paragraph (3) of such subsection is subject to section 2242(d)(1)(B).

"(e) ADMINISTRATOR OF PROGRAMS.—This part, and the subsequent parts of this title, shall be carried out by the Secretary acting through the Administrator of the Health Care Financing Administration.

"(f) APPROVED MEDICAL RESIDENCY TRAINING PROGRAM .—For purposes of this title, the term 'approved medical residency training program' has the meaning given such term in section 1886(h)(5)(A).

"SEC. 2212. ADDITIONAL PROVISIONS REGARDING ANNUAL PAYMENT DOCUMENT.

"(a) PERIODIC REPORTS.—In collecting information under section 2211(b), the Secretary may require that information be submitted to the Secretary in periodic reports.

"(b) INFORMATION RELATING TO MEDICARE PROGRAM.—Information collected by the Secretary under section 2211(b) with respect to a teaching hospital for a fiscal year shall include information on the following:

"(1) The number of inpatient discharges for the fiscal year attributable to individuals enrolled in the MedicarePlus program under part C of title XVIII.

"(2) For each discharge with respect to which payment is received from the Secretary pursuant to part A of title XVIII, the diagnosis-related group within which the discharge is classified (as determined in accordance with section 1886(d)(4)(A)).

"(3) The medicare patient load of the hospital (as defined in section 1886(h)(3)(C)).

"Subpart 2—Amount Relating to MedicarePlus Program

"SEC. 2221. DETERMINATION OF AMOUNT RELATING TO MEDICAREPLUS PROGRAM.

"(a) IN GENERAL.—For purposes of section 2211(a)(1), the amount determined under this section for a teaching hospital for a fiscal year is the product of—

"(1) the amount in the General MedicarePlus Incentive Account on the date specified in section 2201(d)(2) (once the appropriation under such section is made); and

"(2) the percentage determined for the hospital under subsection (b) for the fiscal year.

"(b) ANNUAL HOSPITAL-SPECIFIC PERCENTAGE.—For purposes of subsection (a)(2), the percentage determined under this subsection for a teaching hospital for a fiscal year is the percentage constituted by the ratio of—

"(1) the number of inpatient discharges for the fiscal year attributable to individuals enrolled in the MedicarePlus program under part C of title XVIII; to

"(2) the sum of the respective numbers determined under paragraph (1) for the fiscal year for all teaching hospitals.

"Subpart 3—Amount Relating to Indirect Costs of Graduate Medical Education

"SEC. 2231. DETERMINATION OF AMOUNT RELATING TO INDIRECT COSTS.

"(a) IN GENERAL.—For purposes of section 2211(a)(2), the amount determined under this section for a teaching hospital for a fiscal year is the sum of—

"(1) the amount determined under subsection (b) (relating to the General Indirect-Costs Medical Education Account); and

"(2) the amount determined under subsection (c) (relating to the Medicare Indirect-Costs Medical Education Account), subject to section 2232(d)(1)(B).

"(b) PAYMENT FROM GENERAL ACCOUNT.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the amount determined under this subsection for a teaching hospital for a fiscal year is the product of—

"(A) the amount in the General Indirect-Costs Medical Education Account on the date specified in section

2201(d)(2) (once the appropriation under such section is made); and

"(B) the percentage determined for the hospital under paragraph (2).

"(2) FIXED HOSPITAL-SPECIFIC PERCENTAGE.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the percentage determined under this paragraph for a teaching hospital is the mean average of the respective percentages determined under subparagraph (C) for each fiscal year of the applicable period (as defined in subparagraph (B)), adjusted by the Secretary (upward or downward, as the case may be) on a pro rata basis to the extent necessary to ensure that the sum of the percentages determined under this paragraph for all teaching hospitals is equal to 100 percent. The preceding sentence is subject to section 2232.

"(B) APPLICABLE PERIOD REGARDING RELEVANT DATA; FISCAL YEARS 1992 THROUGH 1994.—For purposes of this part, the term 'applicable period' means the period beginning on the first day of fiscal year 1992 and continuing through the end of fiscal year 1994.

"(C) RESPECTIVE DETERMINATIONS FOR FISCAL YEARS OF APPLICABLE PERIOD.—For purposes of subparagraph (A), the percentage determined under this subparagraph for a teaching hospital for a fiscal year of the applicable period is the percentage constituted by the ratio of—

"(i) the total amount of payments received by the hospital under section 1886(d)(5)(B) for discharges occurring during the fiscal year involved; to

"(ii) the sum of the respective amounts determined under clause (i) for the fiscal year for all teaching hospitals.

"(3) AVAILABILITY OF DATA.—If a teaching hospital received the payments specified in paragraph (2)(C)(i) during the applicable period but a complete set of the relevant data is not available to the Secretary for purposes of determining an amount under such paragraph for the fiscal year involved, the Secretary shall for purposes of such subsection make an estimate on the basis of such data as are available to the Secretary for the applicable period.

"(c) PAYMENT FROM MEDICARE ACCOUNT.—For purposes of subsection (a)(2), the amount determined under this subsection for a teaching hospital for a fiscal year is an amount determined in accordance with the methodology in effect under section 1886(d)(5)(B) for such year. Payments made under section 2211 pursuant to the preceding sentence shall be made from the Medicare Indirect-Costs Medical Education Account.

"SEC. 2232. INDIRECT COSTS; SPECIAL RULES REGARDING PAYMENTS FROM GENERAL ACCOUNT.

"(a) SPECIAL RULE REGARDING FISCAL YEARS 1995 AND 1996.—

"(1) IN GENERAL.—In the case of a teaching hospital whose first payments under section 1886(d)(5)(B) were for discharges occurring in fiscal year 1995 or in fiscal year 1996 (referred to in this subsection individually as a 'first payment year'), the percentage determined under paragraph (2) for the hospital is

deemed to be the percentage applicable under section 2231(b)(2) to the hospital, subject to paragraph (3).

"(2) DETERMINATION OF FIXED PERCENTAGE.—For purposes of paragraph (1), the percentage determined under this paragraph for a teaching hospital is the percentage constituted by the ratio of the amount determined under subparagraph (A) to the amount determined under subparagraph (B), as follows:

"(A)(i) If the first payment year for the hospital is fiscal year 1995, the amount determined under this subparagraph is the total amount of payments received by the hospital under section 1886(d)(5)(B) for discharges occurring during fiscal year 1995.

"(ii) If the first payment year for the hospital is fiscal year 1996, the amount determined under this subparagraph is an amount equal to an estimate by the Secretary of the total amount of payments that would have been paid to the hospital under section 1886(d)(5)(B) for discharges occurring during fiscal year 1995 if such section, as in effect for fiscal year 1996, had applied to the hospital for discharges occurring during fiscal year 1995.

"(B)(i) If the first payment year for the hospital is fiscal year 1995, the amount determined under this subparagraph is the aggregate total of the payments received by teaching hospitals under section 1886(d)(5)(B) for discharges occurring during fiscal year 1995.

"(ii) If the first payment year for the hospital is fiscal year 1996—

"(I) the Secretary shall make an estimate in accordance with subparagraph (A)(ii) for all teaching hospitals; and

"(II) the amount determined under this subparagraph is the sum of the estimates made by the Secretary under subclause (I).

"(3) ADJUSTMENT OF PERCENTAGE.—The percentage determined under paragraph (2) shall be adjusted by the Secretary in accordance with section 2231(b)(2)(A) to the extent determined by the Secretary to be necessary with respect to a sum that equals 100 percent.

"(b) NEW TEACHING HOSPITALS.—

"(1) IN GENERAL.—In the case of a teaching hospital that did not receive payments under section 1886(d)(5)(B) for any of the fiscal years 1992 through 1996, the percentage determined under paragraph (3) for the hospital is deemed to be the percentage applicable under section 2231(b)(2) to the hospital, subject to paragraphs (4) and (5).

"(2) DESIGNATED FISCAL YEAR REGARDING DATA.—The determination under paragraph (3) of a percentage for a teaching hospital described in paragraph (1) shall be made for the most recent fiscal year for which the Secretary has sufficient data to make the determination (referred to in this subsection as the 'designated fiscal year').

"(3) DETERMINATION OF FIXED PERCENTAGE.—For purposes of paragraph (1), the percentage determined under this paragraph for the teaching hospital involved is the percentage con-

stituted by the ratio of the amount determined under subparagraph (A) to the amount determined under subparagraph (B), as follows:

“(A) The amount determined under this subparagraph is an amount equal to an estimate by the Secretary of the total amount of payments that would have been paid to the hospital under section 1886(d)(5)(B) for the designated fiscal year if such section, as in effect for the first fiscal year for which payments pursuant to this subsection are to be made to the hospital, had applied to the hospital for the designated fiscal year.

“(B) The Secretary shall make an estimate in accordance with subparagraph (A) for all teaching hospitals. The amount determined under this subparagraph is the sum of the estimates made by the Secretary under the preceding sentence.

“(4) ADJUSTMENT OF PERCENTAGE.—The percentage determined under paragraph (3) shall be adjusted by the Secretary in accordance with section 2231(b)(2)(A) to the extent determined by the Secretary to be necessary with respect to a sum that equals 100 percent.

“(5) LIMITATION.—This subsection does not apply to a teaching hospital described in paragraph (1) if the hospital is in a State for which a demonstration project under section 1814(b)(3) is in effect.

“(c) CONSOLIDATIONS AND MERGERS.—In the case of two or more teaching hospitals that have each received payments pursuant to section 2231 for one or more fiscal years and that undergo a consolidation or merger, the percentage applicable to the resulting teaching hospital for purposes of section 2231(b)(2) is the sum of the respective percentages that would have applied pursuant to such section if the hospitals had not undergone the consolidation or merger.

“(d) STATES WITH CERTAIN DEMONSTRATION PROJECTS.—

“(1) IN GENERAL.—In the case of a teaching hospital in a State for which a demonstration project under section 1814(b)(3) is in effect—

“(A) the percentage determined under paragraph (2) for the hospital is deemed to be the percentage applicable under section 2231(b)(2) to the hospital; and

“(B) the hospital is not eligible for any payments from the Medicare Indirect-Costs Medical Education Account.

“(2) DETERMINATION OF FIXED PERCENTAGE.—For purposes of paragraph (1)(A):

“(A) The Secretary shall make an estimate of the total amount of payments that would have been received under section 1886(d)(5)(b) by the hospital involved with respect to each of the fiscal years of the applicable period if such section (as in effect for such fiscal years) had applied to the hospital for such years.

“(B) The percentage determined under this paragraph for the hospital for a fiscal year is a mean average percentage determined for the hospital in accordance with the methodology of section 2231(b)(2), except that the estimate

made by the Secretary under subparagraph (A) of this paragraph for a fiscal year of the applicable period is deemed to be the amount that applies for purposes of section 2231(b)(2)(C)(i) for such year.

"Subpart 4—Amount Relating to Direct Costs of Graduate Medical Education

"SEC. 2241. DETERMINATION OF AMOUNT RELATING TO DIRECT COSTS.

"(a) IN GENERAL.—For purposes of section 2211(a)(3), the amount determined under this section for a teaching hospital for a fiscal year is the sum of—

"(1) the amount determined under subsection (b) (relating to the General Direct-Costs Medical Education Account); and

"(2) the amount determined under subsection (c) (relating to the Medicare Direct-Costs Medical Education Account), subject to section 2242(d)(1)(B).

"(b) PAYMENT FROM GENERAL ACCOUNT.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the amount determined under this subsection for a teaching hospital for a fiscal year is the product of—

"(A) the amount in the General Direct-Costs Medical Education Account on the applicable date under section 2201(d)(2) (once the appropriation under such section is made); and

"(B) the percentage determined for the hospital under paragraph (2).

"(2) FIXED HOSPITAL-SPECIFIC PERCENTAGE.—

"(A) IN GENERAL.—For purposes of paragraph (1)(B), the percentage determined under this paragraph for a teaching hospital is the mean average of the respective percentages determined under subparagraph (B) for each fiscal year of the applicable period (as defined in section 2231(b)(2)(B)), adjusted by the Secretary (upward or downward, as the case may be) on a pro rata basis to the extent necessary to ensure that the sum of the percentages determined under this subparagraph for all teaching hospitals is equal to 100 percent. The preceding sentence is subject to section 2242.

"(B) RESPECTIVE DETERMINATIONS FOR FISCAL YEARS OF APPLICABLE PERIOD.—For purposes of subparagraph (A), the percentage determined under this subparagraph for a teaching hospital for a fiscal year of the applicable period is the percentage constituted by the ratio of—

"(i) the total amount of payments received by the hospital under section 1886(h) for cost reporting periods beginning during the fiscal year involved; to

"(ii) the sum of the respective amounts determined under clause (i) for the fiscal year for all teaching hospitals.

"(3) AVAILABILITY OF DATA.—If a teaching hospital received the payments specified in paragraph (2)(B)(i) during the applicable period but a complete set of the relevant data is not available to the Secretary for purposes of determining an amount

under such paragraph for the fiscal year involved, the Secretary shall for purposes of such paragraph make an estimate on the basis of such data as are available to the Secretary for the applicable period.

"(c) PAYMENT FROM MEDICARE ACCOUNT.—For purposes of subsection (a)(2), the amount determined under this subsection for a teaching hospital for a fiscal year is an amount determined in accordance with the methodology in effect under section 1886(h) for such year. Payments made under section 2211 pursuant to the preceding sentence shall be made from the Medicare Direct-Costs Medical Education Account.

"SEC. 2242. DIRECT COSTS; SPECIAL RULES REGARDING PAYMENTS FROM GENERAL ACCOUNT.

"(a) SPECIAL RULE REGARDING FISCAL YEARS 1995 AND 1996.—

"(1) IN GENERAL.—In the case of a teaching hospital whose first payments under section 1886(h) were for the cost reporting period beginning in fiscal year 1995 or in fiscal year 1996 (referred to in this subsection individually as a 'first payment year'), the percentage determined under paragraph (2) for the hospital is deemed to be the percentage applicable under section 2241(b)(2) to the hospital, subject to paragraph (3).

"(2) DETERMINATION OF FIXED PERCENTAGE.—For purposes of paragraph (1), the percentage determined under this paragraph for a teaching hospital is the percentage constituted by the ratio of the amount determined under subparagraph (A) to the amount determined under subparagraph (B), as follows:

"(A)(i) If the first payment year for the hospital is fiscal year 1995, the amount determined under this subparagraph is the total amount of payments received by the hospital under section 1886(h) for cost reporting periods beginning in fiscal year 1995.

"(ii) If the first payment year for the hospital is fiscal year 1996, the amount determined under this subparagraph is an amount equal to an estimate by the Secretary of the total amount of payments that would have been paid to the hospital under section 1886(h) for cost reporting periods beginning in fiscal year 1995 if such section, as in effect for fiscal year 1996, had applied to the hospital for fiscal year 1995.

"(B)(i) If the first payment year for the hospital is fiscal year 1995, the amount determined under this subparagraph is the aggregate total of the payments received by teaching hospitals under section 1886(h) for cost reporting periods beginning in fiscal year 1995.

"(ii) If the first payment year for the hospital is fiscal year 1996—

"(I) the Secretary shall make an estimate in accordance with subparagraph (A)(ii) for all teaching hospitals; and

"(II) the amount determined under this subparagraph is the sum of the estimates made by the Secretary under subclause (I).

"(3) ADJUSTMENT OF PERCENTAGE.—The percentage determined under paragraph (2) shall be adjusted by the Secretary

in accordance with section 2241(b)(2)(A) to the extent determined by the Secretary to be necessary with respect to a sum that equals 100 percent.

"(b) NEW TEACHING HOSPITALS.—

"(1) IN GENERAL.—In the case of a teaching hospital that did not receive payments under section 1886(h) for any of the fiscal years 1992 through 1996, the percentage determined under paragraph (3) for the hospital is deemed to be the percentage applicable under section 2241(b)(2) to the hospital, subject to paragraphs (4) and (5).

"(2) DESIGNATED FISCAL YEAR REGARDING DATA.—The determination under paragraph (3) of a percentage for a teaching hospital described in paragraph (1) shall be made for the most recent fiscal year for which the Secretary has sufficient data to make the determination (referred to in this subsection as the 'designated fiscal year').

"(3) DETERMINATION OF FIXED PERCENTAGE.—For purposes of paragraph (1), the percentage determined under this paragraph for the teaching hospital involved is the percentage constituted by the ratio of the amount determined under subparagraph (A) to the amount determined under subparagraph (B), as follows:

"(A) The amount determined under this subparagraph is an amount equal to an estimate by the Secretary of the total amount of payments that would have been paid to the hospital under section 1886(h) for the designated fiscal year if such section, as in effect for the first fiscal year for which payments pursuant to this subsection are to be made to the hospital, had applied to the hospital for cost reporting periods beginning in the designated fiscal year.

"(B) The Secretary shall make an estimate in accordance with subparagraph (A) for all teaching hospitals. The amount determined under this subparagraph is the sum of the estimates made by the Secretary under the preceding sentence.

"(4) ADJUSTMENT OF PERCENTAGE.—The percentage determined under paragraph (3) shall be adjusted by the Secretary in accordance with section 2223(b)(2)(A) to the extent determined by the Secretary to be necessary with respect to a sum that equals 100 percent.

"(5) LIMITATION.—This subsection does not apply to a teaching hospital described in paragraph (1) if the hospital is in a State for which a demonstration project under section 1814(b)(3) is in effect.

"(c) CONSOLIDATIONS AND MERGERS.—In the case of two or more teaching hospitals that have each received payments pursuant to section 2241 for one or more fiscal years and that undergo a consolidation or merger, the percentage applicable to the resulting teaching hospital for purposes of section 2241(b)(2) is the sum of the respective percentages that would have applied pursuant to such section if the hospitals had not undergone the consolidation or merger.

"(d) STATES WITH CERTAIN DEMONSTRATION PROJECTS.—

“(1) IN GENERAL.—In the case of a teaching hospital in a State for which a demonstration project under section 1814(b)(3) is in effect—

“(A) the percentage determined under paragraph (2) for the hospital is deemed to be the percentage applicable under section 2241(b)(2) to the hospital; and

“(B) the hospital is not eligible for any payments from the Medicare Direct-Costs Medical Education Account.

“(2) DETERMINATION OF FIXED PERCENTAGE.—For purposes of paragraph (1)(A):

“(A) The Secretary shall make an estimate of the total amount of payments that would have been received under section 1886(h) by the hospital involved with respect to each of the fiscal years of the applicable period if such section (as in effect for such fiscal years) had applied to the hospital for such years.

“(B) The percentage determined under this paragraph for the hospital for a fiscal year is a mean average percentage determined for the hospital in accordance with the methodology of section 2241(b)(2), except that the estimate made by the Secretary under subparagraph (A) of this paragraph for a fiscal year of the applicable period is deemed to be the amount that applies for purposes of section 2241(b)(2)(B)(i) for such year.

“SEC. 2243. DIRECT COSTS; AUTHORITY FOR PAYMENTS TO CONSORTIA OF PROVIDERS.

“(a) IN GENERAL.—In lieu of making payments to teaching hospitals pursuant to sections 2221 and 2241, the Secretary may make payments under this section to consortia that meet the requirements of subsection (b).

“(b) QUALIFYING CONSORTIUM.—For purposes of subsection (a), a consortium meets the requirements of this subsection if the consortium is in compliance with the following:

“(1) The consortium consists of a teaching hospital and one or more of the following entities:

“(A) Schools of allopathic medicine or osteopathic medicine.

“(B) Other teaching hospitals.

“(C) Approved medical residency training programs.

“(D) Federally qualified health centers.

“(E) Medical group practices.

“(F) Managed care entities.

“(G) Entities furnishing outpatient services.

“(H) Such other entities as the Secretary determines to be appropriate.

“(2) The members of the consortium have agreed to collaborate in the programs of graduate medical education that are operated by such members.

“(3) With respect to the receipt by the consortium of payments made pursuant to this section, the members of the consortium have agreed on a method for allocating the payments among the members.

“(4) The consortium meets such additional requirements as the Secretary may establish.

"(c) PAYMENTS FROM ACCOUNTS.—The total amount of payments to a qualifying consortium for a fiscal year pursuant to subsection (a) shall be the sum of—

"(1) the aggregate amount determined for the teaching hospitals of the consortium pursuant to section 2221(a) (relating to the General MedicarePlus Incentive Account);

"(2) the aggregate amount determined for the teaching hospitals of the consortium pursuant to section 2241(a)(1) (relating to the General Direct-Costs Account); and

"(3) an amount determined for the consortium in accordance with the methodology in effect under section 1886(j)(2)(C)(i) for the fiscal year (relating to the Medicare Direct-Costs Account).

"(d) DEFINITION.—For purposes of this title, the term 'qualifying consortium' means a consortium that meets the requirements of subsection (b).".

CHAPTER 2—AMENDMENTS TO MEDICARE PROGRAM

SEC. 12511. TRANSFER OF FUNDS.

Section 1886 (42 U.S.C. 1395ww) is amended—

(1) in subsection (d)(5)(B), in the matter preceding clause (i), by striking "The Secretary shall provide" and inserting the following: "For discharges occurring on or before September 30, 1996, the Secretary shall provide";

(2) in subsection (h)—

(A) in paragraph (1), in the first sentence, by striking "the Secretary shall provide" and inserting "the Secretary shall, subject to paragraph (6), provide"; and

(B) by adding at the end the following paragraph:

"(6) LIMITATION.—

"(A) IN GENERAL.—The authority to make payments under this subsection applies only with respect to cost reporting periods ending on or before September 30, 1996, except as provided in subparagraph (B).

"(B) RULE REGARDING PORTION OF LAST COST REPORTING PERIOD.—In the case of a cost reporting period that extends beyond September 30, 1996, payments under this subsection shall be made with respect to such portion of the period as has lapsed as of such date.

"(C) RULE OF CONSTRUCTION.—This paragraph may not be construed as authorizing any payment under section 1861(v) with respect to graduate medical education."; and

(3) by adding at the end the following subsection:

"(j) TRANSFERS TO TEACHING HOSPITAL AND GRADUATE MEDICAL EDUCATION TRUST FUND.—

"(1) INDIRECT COSTS OF MEDICAL EDUCATION.—

"(A) IN GENERAL.—From the Federal Hospital Insurance Trust Fund, the Secretary shall, for fiscal year 1997 and each subsequent fiscal year, transfer to the Medicare Indirect-Costs Medical Education Account under section 2201 an amount determined by the Secretary in accordance with subparagraph (B).

"(B) DETERMINATION OF AMOUNTS.—The Secretary shall make an estimate for the fiscal year involved of the

nationwide total of the amounts that would have been paid under subsection (d)(5)(B) to hospitals during the fiscal year if such payments had not been terminated for discharges occurring after September 30, 1996. For purposes of subparagraph (A), the amount determined under this subparagraph for the fiscal year is the estimate made by the Secretary under the preceding sentence.

"(C) SUPPLEMENTAL TRANSFERS.—If the Secretary determines that the amount of a transfer under subparagraph (A) for a fiscal year is insufficient for making payments in the amounts required pursuant to section 2231(a)(2) for the year, the Secretary shall make such additional transfers for the year between the funds and accounts involved as the Secretary determines to be necessary for making the payments.

"(2) DIRECT COSTS OF MEDICAL EDUCATION.—

"(A) IN GENERAL.—From the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, the Secretary shall, for fiscal year 1997 and each subsequent fiscal year, transfer to the Medicare Direct-Costs Medical Education Account (under section 2201) the sum of—

"(i) an amount determined by the Secretary in accordance with subparagraph (B); and

"(ii) as applicable, an amount determined by the Secretary in accordance with subparagraph (C)(ii).

"(B) DETERMINATION OF AMOUNTS.—For each hospital (other than a hospital that is a member of a qualifying consortium referred to in subparagraph (C)), the Secretary shall make an estimate for the fiscal year involved of the amount that would have been paid under subsection (h) to the hospital during the fiscal year if such payments had not been terminated for cost reporting periods ending on or before September 30, 1996. For purposes of subparagraph (A)(i), the amount determined under this subparagraph for the fiscal year is the sum of all estimates made by the Secretary under the preceding sentence.

"(C) ESTIMATES REGARDING QUALIFYING CONSORTIA.—If the Secretary authorizes payments under section 2243(a) to one or more qualifying consortia, the Secretary shall carry out the following:

"(i) The Secretary shall establish a methodology for making payments to qualifying consortia with respect to the reasonable direct costs of such consortia in carrying out programs of graduate medical education. The methodology shall be the methodology established in subsection (h), modified to the extent necessary to take into account the participation in such programs of entities other than hospitals.

"(ii) For each qualifying consortium, the Secretary shall make an estimate for the fiscal year involved of the amount that would have been paid to the consortium during the fiscal year if, using the methodology under clause (i), payments had been made to the con-

sortium for the fiscal year as reimbursements with respect to cost reporting periods. For purposes of subparagraph (A)(ii), the amount determined under this clause for the fiscal year is the sum of all estimates made by the Secretary under the preceding sentence.

“(D) ALLOCATION BETWEEN FUNDS.—In providing for a transfer under subparagraph (A) for a fiscal year, the Secretary shall provide for an allocation of the amounts involved between part A and part B (and the trust funds established under the respective parts) as reasonably reflects the proportion of direct graduate medical education costs of hospitals associated with the provision of services under each respective part.

“(E) SUPPLEMENTAL TRANSFERS.—If the Secretary determines that the amount of a transfer under subparagraph (A) for a fiscal year is insufficient for making payments in the amounts required pursuant to sections 2241(a)(2) and 2243(c)(3) for the year, the Secretary shall make such additional transfers for the year between the funds and accounts involved as the Secretary determines to be necessary for making the payments.

“(3) APPLICABILITY OF CERTAIN AMENDMENTS.—Amendments made to subsection (d)(5)(B) and subsection (h) that are effective on or after October 1, 1996, apply only for purposes of estimates under paragraphs (1) and (2) and for purposes of determining the amount of payments under 2211. Such amendments do not require any adjustment to amounts paid under subsection (d)(5)(B) or (h) with respect to fiscal year 1996 or any prior fiscal year.

“(4) RELATIONSHIP TO CERTAIN DEMONSTRATION PROJECTS.—In the case of a State for which a demonstration project under section 1814(b)(3) is in effect, the Secretary, in making determinations of the rates of increase under such section, shall include all amounts transferred under this subsection. Such amounts shall be so included to the same extent and in the same manner as amounts determined under subsections (d)(5)(B) and (h) were included in such determination under the provisions of this title in effect on September 30, 1996.”.

Title XII—Other Provisions

Subtitle F—National Defense Stockpile

SEC. 12601. DISPOSAL OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE FOR DEFICIT REDUCTION.

(a) DISPOSALS REQUIRED.—(1) During fiscal year 1996, the President shall dispose of all cobalt contained in the National Defense Stockpile that, as of the date of the enactment of this Act, is authorized for disposal under any law (other than this Act).

(2) In addition to the disposal of cobalt under paragraph (1), the President shall dispose of additional quantities of cobalt and quantities of other materials contained in the National Defense

Stockpile and specified in the table in subsection (b) so as to result in receipts to the United States in amounts equal to—

(A) $21,000,000 during the fiscal year ending September 30, 1996;

(B) $338,000,000 during the five-fiscal year period ending on September 30, 2000; and

(C) $649,000,000 during the seven-fiscal year period ending on September 30, 2002.

(b) LIMITATION ON DISPOSAL QUANTITY.—The total quantities of materials authorized for disposal by the President under subsection (a)(2) may not exceed the amounts set forth in the following table:

Authorized Stockpile Disposals

Material for disposal	*Quantity*
Aluminum	*62,881 short tons*
Cobalt	*30,000,000 pounds contained*
Columbium Ferro	*930,911 pounds contained*
Germanium Metal	*40,000 kilograms*
Indium	*35,000 troy ounces*
Palladium	*15,000 troy ounces*
Platinum	*10,000 troy ounces*
Rubber, Natural	*125,138 long tons*
Tantalum, Carbide Powder	*6,000 pounds contained*
Tantalum, Minerals	*750,000 pounds contained*
Tantalum, Oxide	*40,000 pounds contained*

(c) DEPOSIT OF RECEIPTS.—Notwithstanding section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h), funds received as a result of the disposal of materials under subsection (a)(2) shall be deposited into the general fund of the Treasury for the purpose of deficit reduction.

(d) RELATIONSHIP TO OTHER DISPOSAL AUTHORITY.—The disposal authority provided in subsection (a)(2) is new disposal authority and is in addition to, and shall not affect, any other disposal authority provided by law regarding the materials specified in such subsection.

(e) TERMINATION OF DISPOSAL AUTHORITY.—The President may not use the disposal authority provided in subsection (a)(2) after the date on which the total amount of receipts specified in subparagraph (C) of such subsection is achieved.

(f) DEFINITION.—The term "National Defense Stockpile" means the National Defense Stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

Subtitle G——Child Protection Block Grant Program And Foster Care and Adoption Assistance

SEC. 12701. ESTABLISHMENT OF PROGRAM.

Title IV of the Social Security Act (42 U.S.C. 601 et seq.) is amended by striking subpart 2 of part B and inserting the following:

"Subpart 2—Block Grants to States for the Protection of Children and Matching Payments for Foster Care and Adoption Assistance

"SEC. 430. ELIGIBLE STATES.

"(a) IN GENERAL.—As used in this subpart, the term 'eligible State' means a State that has submitted to the Secretary, not later than October 1, 1996, and every 3 years thereafter, a plan which has been signed by the chief executive officer of the State and that includes the following:

"(1) OUTLINE OF CHILD PROTECTION PROGRAM.—A written document that outlines the activities the State intends to conduct to achieve the child protection goals of the program funded under this subpart, including the procedures to be used for—

"(A) receiving and assessing reports of child abuse or neglect;

"(B) investigating such reports;

"(C) with respect to families in which abuse or neglect has been confirmed, providing services or referral for services for families and children where the State makes a determination that the child may safely remain with the family;

"(D) protecting children by removing them from dangerous settings and ensuring their placement in a safe environment;

"(E) providing training for individuals mandated to report suspected cases of child abuse or neglect;

"(F) protecting children in foster care;

"(G) promoting timely adoptions;

"(H) protecting the rights of families, using adult relatives as the preferred placement for children separated from their parents where such relatives meet the relevant State child protection standards;

"(I) providing services to individuals, families, or communities, either directly or through referral, that are aimed at preventing the occurrence of child abuse and neglect; and

"(J) establishing and responding to citizen review panels under section 434.

"(2) CERTIFICATION OF STATE LAW REQUIRING THE REPORTING OF CHILD ABUSE AND NEGLECT.—A certification that the State has in effect laws that require public officials and other professionals to report, in good faith, actual or suspected instances of child abuse or neglect.

"(3) CERTIFICATION OF PROCEDURES FOR SCREENING, SAFETY ASSESSMENT, AND PROMPT INVESTIGATION.—A certification that the State has in effect procedures for receiving and responding to reports of child abuse or neglect, including the reports described in paragraph (2), and for the immediate screening, safety assessment, and prompt investigation of such reports.

"(4) CERTIFICATION OF STATE PROCEDURES FOR REMOVAL AND PLACEMENT OF ABUSED OR NEGLECTED CHILDREN.—A cer-

tification that the State has in effect procedures for the removal from families and placement of abused or neglected children and of any other child in the same household who may also be in danger of abuse or neglect.

"(5) CERTIFICATION OF PROVISIONS FOR IMMUNITY FROM PROSECUTION.—A certification that the State has in effect laws requiring immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect.

"(6) CERTIFICATION OF PROVISIONS AND PROCEDURES FOR EXPUNGEMENT OF CERTAIN RECORDS.—A certification that the State has in effect laws and procedures requiring the facilitation of the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false.

"(7) CERTIFICATION OF PROVISIONS AND PROCEDURES RELATING TO APPEALS.—A certification that not later then 2 years after the date of the enactment of this subpart, the State shall have laws and procedures in effect affording individuals an opportunity to appeal an official finding of abuse or neglect.

"(8) CERTIFICATION OF STATE PROCEDURES FOR DEVELOPING AND REVIEWING WRITTEN PLANS FOR PERMANENT PLACEMENT OF REMOVED CHILDREN.—A certification that the State has in effect procedures for ensuring that a written plan is prepared for children who have been removed from their families. Such plan shall specify the goals for achieving a permanent placement for the child in a timely fashion, for ensuring that the written plan is reviewed every 6 months (until such placement is achieved), and for ensuring that information about such children is collected regularly and recorded in case records, and include a description of such procedures.

"(9) CERTIFICATION OF STATE PROGRAM TO PROVIDE INDEPENDENT LIVING SERVICES.—A certification that the State has in effect a program to provide independent living services, for assistance in making the transition to self-sufficient adulthood, to individuals in the child protection program of the State who are 16, but who are not 20 (or, at the option of the State, 22), years of age, and who do not have a family to which to be returned.

"(10) CERTIFICATION OF STATE PROCEDURES TO RESPOND TO REPORTING OF MEDICAL NEGLECT OF DISABLED INFANTS.—

"(A) IN GENERAL.—A certification that the State has in place for the purpose of responding to the reporting of medical neglect of infants (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for—

"(i) coordination and consultation with individuals designated by and within appropriate health-care facilities;

"(ii) prompt notification by individuals designated by and within appropriate health-care facilities of

cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

"(iii) authority, under State law, for the State child protective service to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

"(B) WITHHOLDING OF MEDICALLY INDICATED TREATMENT.—As used in subparagraph (A), the term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that such term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment—

"(i) the infant is chronically and irreversibly comatose;

"(ii) the provision of such treatment would—

"(I) merely prolong dying;

"(II) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

"(III) otherwise be futile in terms of the survival of the infant; or

"(iii) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

"(11) IDENTIFICATION OF CHILD PROTECTION GOALS.—The quantitative goals of the State child protection program.

"(12) CERTIFICATION OF CHILD PROTECTION STANDARDS.—With respect to fiscal years beginning on or after April 1, 1996, a certification that the State—

"(A) has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined—

"(i) the appropriateness of, and necessity for, the foster care placement;

"(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

"(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;

"(B) is operating, to the satisfaction of the Secretary—

"(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every

child who is (or, within the immediately preceding 12 months, has been) in foster care;

"(ii) a case review system for each child receiving foster care under the supervision of the State;

"(iii) a service program designed to help children—

"(I) where appropriate, return to families from which they have been removed; or

"(II) be placed for adoption, with a legal guardian, or if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement; and

"(iv) a preplacement preventive services program designed to help children at risk for foster care placement remain with their families; and

"(C)(i) has reviewed (or not later than October 1, 1997, will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

"(ii) is implementing (or not later than October 1, 1997, will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children.

"(13) CERTIFICATION OF REASONABLE EFFORTS BEFORE PLACEMENT OF CHILDREN IN FOSTER CARE.—A certification that the State in each case will—

"(A) make reasonable efforts prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from the child's home, and to make it possible for the child to return home; and

"(B) with respect to families in which abuse or neglect has been confirmed, provide services or referral for services for families and children where the State makes a determination that the child may safely remain with the family.

"(14) CERTIFICATION OF COOPERATIVE EFFORTS.—A certification by the State, where appropriate, that all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this subpart.

"(b) DETERMINATIONS.—The Secretary shall determine whether a plan submitted pursuant to subsection (a) contains the material required by subsection (a), other than the material described in paragraph (10) of such subsection. The Secretary may not require a State to include in such a plan any material not described in subsection (a).

"SEC. 431. GRANTS TO STATES FOR CHILD PROTECTION AND PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE..

"(a) FUNDING OF BLOCK GRANTS.—Each eligible State shall be entitled to receive from the Secretary for each fiscal year specified

in subsection (c)(1) a grant in an amount equal to the State share of the child protection amount for the fiscal year.

"(b) MAINTENANCE PAYMENTS.—

"(1) IN GENERAL.—In addition to the grants described in subsection (a), each eligible State shall be entitled to receive from the Secretary for each quarter of each fiscal year specified in subsection (c)(1) an amount equal to the sum of—

"(A) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act as in effect on the day before the date of enactment of this subpart) of the total amount expended during such quarter as foster care maintenance payments under the child protection program under this subpart for children in foster family homes or child-care institutions; plus

"(B) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act (as so in effect)) of the total amount expended during such quarter as adoption assistance payments under the child protection program under this subpart pursuant to adoption assistance agreements.

"(2) ESTIMATES BY THE SECRETARY.—

"(A) IN GENERAL.—The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled to receive under paragraph (1) for such quarter, such estimates to be based on—

"(i) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with paragraph (1), and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived;

"(ii) records showing the number of children in the State receiving assistance under this subpart; and

"(iii) such other information as the Secretary may find necessary.

"(B) PAYMENTS.—The Secretary shall pay to the States the amounts so estimated under subparagraph (A), reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this subsection to such State for any prior quarter and with respect to which adjustment has not already been made under this paragraph.

"(C) PRO RATA SHARE.— The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under this subpart shall be considered an overpayment to be adjusted under this paragraph.

"(3) ALLOWANCE OR DISALLOWANCE OF CLAIM.—

"(A) IN GENERAL.—Within 60 days after receipt of a State claim for expenditures pursuant to paragraph (2)(A), the Secretary shall allow, disallow, or defer such claim.

"(B) NOTICE.—Within 15 days after a decision to defer a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

"(C) DECISION.—Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall—

"(i) disallow the claim, if able to complete the review and determine that the claim is not allowable; or

"(ii) in any other case, allow the claim, subject to disallowance (as necessary)—

"(I) upon completion of the review, if it is determined that the claim is not allowable; or

"(II) on the basis of findings of an audit or financial management review.

"(c) DEFINITIONS.—As used in this section:

"(1) CHILD PROTECTION AMOUNT.—The term 'child protection amount' means—

"(A) $1,936,000,000 for fiscal year 1996;

"(B) $1,942,000,000 for fiscal year 1997;

"(C) $2,063,000,000 for fiscal year 1998;

"(D) $2,167,000,000 for fiscal year 1999;

"(E) $2,297,000,000 for fiscal year 2000;

"(F) $2,432,000,000 for fiscal year 2001; and

"(G) $2,593,000,000 for fiscal year 2002;

"(2) STATE SHARE.—

"(A) IN GENERAL.—The term 'State share' means the qualified child protection expenses of the State divided by the sum of the qualified child protection expenses of all of the States.

"(B) QUALIFIED CHILD PROTECTION EXPENSES.—The term 'qualified child protection expenses' means, with respect to a State the greater of—

"(i) the total amount of—

"(I) ⅓ of the total obligations to the State under the provisions of law specified in clauses (i), (ii), and (iii) of subparagraph (C) for fiscal years 1992, 1993, and 1994; and

"(II) ⅓ of the total claims submitted by the State (without regard to disputed claims) under the provision of law specified in subparagraph (C)(iv) for fiscal years 1992, 1993, and 1994; or

"(ii) the total amount of—

"(I) the total obligations to the State under the provisions of law specified in clauses (i), (ii), and (iii) of subparagraph (C) for fiscal year 1995; and

"(II) the total claims submitted by the State (without regard to disputed claims) under the provision of law specified in subparagraph (C)(iv) for fiscal year 1995.

"(C) PROVISIONS OF LAW.—The provisions of law specified in this subparagraph are the following (as in effect on the day before the date of enactment of this subpart):

"(i) Section 434 of this Act.

"(ii) Section 474(a)(4) of this Act.

"(iii) Section 474(a)(3) of this Act.

"(d) USE OF GRANT.—

"(1) IN GENERAL.—A State to which a grant is made under this section may use the grant in any manner that the State deems appropriate to accomplish the child protection goals of the State program funded under this subpart.

"(2) TIMING OF EXPENDITURES.—A State to which a grant is made under this section for a fiscal year shall expend the total amount of the grant not later than the end of the immediately succeeding fiscal year.

"(3) RULE OF INTERPRETATION.—This subpart shall not be interpreted to prohibit short- and long-term foster care facilities operated for profit from receiving funds provided under this subpart.

"(e) TIMING OF PAYMENTS.—The Secretary shall pay each eligible State the amount of the grant payable to the State under this section in quarterly installments.

"(f) PENALTIES.—

"(1) FOR USE OF GRANT IN VIOLATION OF THIS SUBPART.—If an audit conducted pursuant to chapter 75 of title 31, United States Code, finds that an amount paid to a State under this section for a fiscal year has been used in violation of this subpart, then the Secretary shall reduce the amount of the grant that would (in the absence of this paragraph) be payable to the State under this section for the immediately succeeding fiscal year by the amount so used, plus 5 percent of the grant paid under this section to the State for such fiscal year.

"(2) FOR FAILURE TO MAINTAIN EFFORT.—

"(A) IN GENERAL.—If an audit conducted pursuant to chapter 75 of title 31, United States Code, finds that the amount expended by a State (other than from amounts provided by the Federal Government) during the fiscal years specified in subparagraph (B), to carry out the State program funded under this subpart is less than the applicable percentage specified in such subparagraph of the total amount expended by the State (other than from amounts provided by the Federal Government) during fiscal year 1995 under subpart 2 of part B and part E of this title (as in effect on the day before the date of the enactment of this subpart), then the Secretary shall reduce the amount of the grant that would (in the absence of this paragraph) be payable to the State under this section for the immediately succeeding fiscal year by the amount of the difference, plus 5 percent of the grant paid under this section to the State for such fiscal year.

"(B) SPECIFICATION OF FISCAL YEARS AND APPLICABLE PERCENTAGES.—The fiscal years and applicable percentages specified in this subparagraph are as follows:

"(i) For fiscal years 1996 and 1997, 100 percent.

"(ii) For fiscal years 1998 through 2002, 75 percent.

"(3) FOR FAILURE TO SUBMIT REQUIRED REPORT.—

"(A) IN GENERAL.—The Secretary shall reduce by 3 percent the amount of the grant that would (in the absence of this paragraph) be payable to a State under this section for a fiscal year if the Secretary determines that the State has not submitted the report required by section 436(b) for the immediately preceding fiscal year, within 6 months after the end of the immediately preceding fiscal year.

"(B) RESCISSION OF PENALTY.—The Secretary shall rescind a penalty imposed on a State under subparagraph (A) with respect to a report for a fiscal year if the State submits the report before the end of the immediately succeeding fiscal year.

"(4) FOR FAILURE TO COMPLY WITH SAMPLING METHODS REQUIREMENTS.—The Secretary may reduce by not more than 1 percent the amount of the grant that would (in the absence of this paragraph) be payable to a State under this section for a succeeding fiscal year if the Secretary determines that the State has not complied with the Secretary's sampling methods requirements under section 436(c)(2) during the prior fiscal year.

"(5) STATE FUNDS TO REPLACE REDUCTIONS IN GRANT.—A State which has a penalty imposed against it under this subsection for a fiscal year shall expend additional State funds in an amount equal to the amount of the penalty for the purpose of carrying out the State program under this subpart during the immediately succeeding fiscal year.

"(6) REASONABLE CAUSE EXCEPTION.—The Secretary may not impose a penalty on a State under this subsection with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

"(7) CORRECTIVE COMPLIANCE PLAN.—

"(A) IN GENERAL.—

"(i) NOTIFICATION OF VIOLATION.—Notwithstanding any other provision of law, the Federal Government shall, before assessing a penalty against a State under this subsection, notify the State of the violation of law for which the penalty would be assessed and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct any such violations and how the State will insure continuing compliance with the requirements of this subpart.

"(ii) 60-DAY PERIOD TO PROPOSE A CORRECTIVE COMPLIANCE PLAN.—Any State notified under clause (i) shall have 60 days in which to submit to the Federal Government a corrective compliance plan to correct any violations described in clause (i).

"(iii) ACCEPTANCE OF PLAN.—The Federal Government shall have 60 days to accept or reject the State's corrective compliance plan and may consult with the State during this period to modify the plan. If the Federal Government does not accept or reject the corrective

compliance plan during the period, the corrective compliance plan shall be deemed to be accepted.

"(B) FAILURE TO CORRECT.—If a corrective compliance plan is accepted by the Federal Government, no penalty shall be imposed with respect to a violation described in this subsection if the State corrects the violation pursuant to the plan. If a State has not corrected the violation in a timely manner under the plan, some or all of the penalty shall be assessed.

"(8) LIMITATION ON AMOUNT OF PENALTY.—

"(A) IN GENERAL.—In imposing the penalties described in this subsection, the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

"(B) CARRYFORWARD OF UNRECOVERED PENALTIES.—To the extent that subparagraph (A) prevents the Secretary from recovering during a fiscal year the full amount of all penalties imposed on a State under this subsection for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 431(a) for the immediately succeeding fiscal year.

"(g) TREATMENT OF TERRITORIES.—

"(1) IN GENERAL.—A territory, as defined in section 1108(b)(1), shall carry out a child protection program in accordance with the provisions of this subpart.

"(2) PAYMENTS.—Each territory, as so defined, shall be entitled to receive from the Secretary for any fiscal year an amount, in accordance with section 1108, which shall be used for the purpose of carrying out a child protection program in accordance with the provisions of this subpart.

"(h) LIMITATION ON FEDERAL AUTHORITY.—Except as expressly provided in this Act, the Secretary may not regulate the conduct of States under this subpart or enforce any provision of this subpart.

"SEC. 432. REQUIREMENTS FOR FOSTER CARE MAINTENANCE PAYMENTS.

"(a) IN GENERAL.—Each State operating a program under this subpart shall make foster care maintenance payments under section 431(b) with respect to a child who would meet the requirements of section 406(a) or of section 407 (as in effect on the day before the date of the enactment of this subpart) but for the removal of the child from the home of a relative (specified in section 406(a)(as so in effect)), if—

"(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts of the type described in section 430(a)(13) have been made;

"(2) such child's placement and care are the responsibility of—

"(A) the State; or

"(B) any other public agency with whom the State has made an agreement for the administration of the State program under this subpart which is still in effect;

“(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination referred to in paragraph (1); and

“(4) such child—

“(A) would have been eligible to receive aid under the eligibility standards under the State plan approved under section 402 (as in effect on the day before the date of the enactment of this subpart and adjusted for inflation, in accordance with regulations issued by the Secretary) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated; or

“(B) would have received such aid in or for such month if application had been made therefore, or the child had been living with a relative specified in section 406(a) (as so in effect) within 6 months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month such child had been living with such a relative and application therefore had been made.

“(b) LIMITATION ON FOSTER CARE PAYMENTS.—Foster care maintenance payments may be made under this subpart only on behalf of a child described in subsection (a) of this section who is—

“(1) in the foster family home of an individual, whether the payments therefore are made to such individual or to a public or private child-placement or child-care agency; or

“(2) in a child-care institution, whether the payments therefore are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term ‘foster care maintenance payments’ (as defined in section 437(6)).

“(c) VOLUNTARY PLACEMENTS.—

“(1) SATISFACTION OF CHILD PROTECTION STANDARDS.—Notwithstanding any other provision of this section, Federal payments may be made under this subpart with respect to amounts expended by any State as foster care maintenance payments under this subpart, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a), only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 435(b) or 430(a)(12).

“(2) REMOVAL IN EXCESS OF 180 DAYS.—No Federal payment may be made under this subpart with respect to amounts expended by any State as foster care maintenance payments, in the case of any child who was removed from such child’s home pursuant to a voluntary placement agreement as described in subsection (a) and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

"(3) DEEMED REVOCATION OF AGREEMENTS.—In any case where—

"(A) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a); and

"(B) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

"SEC. 433. REQUIREMENTS FOR ADOPTION ASSISTANCE PAYMENTS.

"(a) IN GENERAL.—A State operating a program under this subpart shall enter into adoption assistance agreements with the adoptive parents of children with special needs.

"(b) PAYMENTS UNDER AGREEMENTS.—Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs who meets the requirements of subsection (c), the State may make adoption assistance payments to such parents or through another public or nonprofit private agency, in amounts determined under subsection (d).

"(c) CHILDREN WITH SPECIAL NEEDS.—For purposes of subsection (b), a child meets the requirements of this subsection if such child—

"(1)(A) at the time adoption proceedings were initiated, met the requirements of section 406(a) or section 407 (as in effect on the day before the date of the enactment of this subpart) or would have met such requirements except for such child's removal from the home of a relative (specified in section 406(a) (as so in effect)), either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 431(b) (or 403 (as so in effect)) or as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child;

"(B) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

"(C) 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;

"(2)(A) would have received aid under the eligibility standards under the State plan approved under section 402 (as in effect on the day before the date of the enactment of this subpart, adjusted for inflation, in accordance with regulations issued by the Secretary) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated;

"(B) would have received such aid in or for such month if application had been made therefore, or had been living with a relative specified in section 406(a) (as so in effect) within 6 months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have

received such aid in or for such month if in such month such child had been living with such a relative and application therefore had been made; or

"(C) is a child described in subparagraph (A) or (B); and

"(3) has been determined by the State, pursuant to subsection (g) of this section, to be a child with special needs.

"(d) DETERMINATION OF PAYMENTS.—The amount of the payments to be made in any case under subsection (b) shall be determined through agreement between the adoptive parents and the State or a public or nonprofit private agency administering the program under this subpart, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

"(e) PAYMENT EXCEPTION.—Notwithstanding subsection (d), no payment may be made to parents with respect to any child who has attained the age of 18 (or, where the State determines that the child has a mental or physical disability which warrants the continuation of assistance, the age of 21), and no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this subpart shall keep the State or public or nonprofit private agency administering the program under this subpart informed of circumstances which would, pursuant to this section, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

"(f) PRE-ADOPTION PAYMENTS.—For purposes of this subpart, individuals with whom a child who has been determined by the State, pursuant to subsection (g), to be a child with special needs is placed for adoption in accordance with applicable State and local law shall be eligible for adoption assistance payments during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

"(g) DETERMINATION OF CHILD WITH SPECIAL NEEDS.—For purposes of this section, a child shall not be considered a child with special needs unless—

"(1) the State has determined that the child cannot or should not be returned to the home of the child's parents; and

"(2) the State had first determined—

"(A) that there exists with respect to the child a specific factor or condition such as the child's ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance

under this subpart or medical assistance under title XIX or XXI; and

"(B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX or XXI.

"SEC. 434. CITIZEN REVIEW PANELS.

"(a) ESTABLISHMENT.—Each State to which a grant is made under section 431(a) shall establish at least 3 citizen review panels.

"(b) COMPOSITION.—Each panel established under subsection (a) shall be broadly representative of the community from which drawn.

"(c) FREQUENCY OF MEETINGS.—Each panel established under subsection (a) shall meet not less frequently than quarterly.

"(d) DUTIES.—

"(1) IN GENERAL.—Each panel established under subsection (a) shall, by examining specific cases, determine the extent to which the State and local agencies responsible for carrying out activities under this subpart are doing so in accordance with the State plan, with the child protection standards set forth in section 430(a)(12) and 435, and with any other criteria that the panel considers important to ensure the protection of children.

"(2) CONFIDENTIALITY.—The members and staff of any panel established under subsection (a) shall not disclose to any person or government any information about any specific child protection case with respect to which the panel is provided information.

"(e) STATE ASSISTANCE.—Each State that establishes a panel under subsection (a) shall afford the panel access to any information on any case that the panel desires to review, and shall provide the panel with staff assistance in performing its duties.

"(f) REPORTS.—Each panel established under subsection (a) shall make a public report of its activities after each meeting.

"SEC. 435. FOSTER CARE PROTECTION REQUIRED FOR ADDITIONAL FEDERAL PAYMENTS.

"(a) REDUCTION OF GRANT.—A State shall not receive a grant under section 431(a) unless such State—

"(1) has conducted an inventory of all children who have been in foster care under the responsibility of the State for a period of 6 months preceding the inventory, and determined the appropriateness of, and necessity for, the current foster placement, whether the child can be or should be returned to his parents or should be freed for adoption, and the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship; and

"(2) has implemented and is operating to the satisfaction of the Secretary—

"(A) a statewide information system from which the status, demographic characteristics, location, and goals for

the placement of every child in foster care or who has been in such care within the preceding 12 months can readily be determined;

“(B) a case review system (as defined in section 437(4)) for each child receiving foster care under the supervision of the State; and

“(C) a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship.

“(b) ADDITIONAL REQUIREMENTS.—A State shall not receive a grant under section 431(a) unless such State—

“(1) has completed an inventory of the type specified in subsection (a)(1);

“(2) has implemented and is operating the program and systems specified in subsection (a)(2); and

“(3) has implemented a preplacement preventive service program designed to help children remain with their families.

“(c) PRESUMPTION FOR EXPENDITURES.—Any amounts expended by a State for the purpose of complying with the requirements of subsection (a) or (b) shall be conclusively presumed to have been expended for child welfare services.

“SEC. 436. DATA COLLECTION AND REPORTING.

“(a) ANNUAL REPORTS ON STATE CHILD WELFARE GOALS.—On the date that is 3 years after the effective date of this subpart and annually thereafter, each State to which a grant is made under section 431(a) shall submit to the Secretary a report that contains quantitative information on the extent to which the State is making progress toward achieving the goals of the State child protection program.

“(b) STATE DATA REPORTS.—

“(1) BIANNUAL REPORTS.—Each State to which a grant is made under section 431(a) shall biannually submit to the Secretary a report that includes the following information with respect to each child within the State receiving publicly-supported child welfare services under the State program funded under this subpart:

“(A) Whether the child received services under the program funded under this subpart.

“(B) The age, gender, and family income of the parents and child.

“(C) The county of residence of the child.

“(D) Whether the child was removed from the family.

“(E) Whether the child entered foster care under the responsibility of the State.

“(F) The type of out-of-home care in which the child was placed (including institutional care, group home care, family foster care, or relative placement).

“(G) The child’s permanency planning goal, such as family reunification, kinship care, adoption, or independent living.

“(H) Whether the child was released for adoption.

“(I) Whether the child exited from foster care, and, if so, the reason for the exit, such as return to family, placement with relatives, adoption, independent living, or death.

"(J) Other information as required by the Secretary and agreed to by a majority of the States, including information necessary to ensure a that there is a smooth transition of data from the Adoption and Foster Care Analysis and Reporting Systems and the National Center on Abuse and Neglect Data System to the data reporting system required under this section.

"(2) ANNUAL REPORTS.—Each State to which a grant is made under section 431(a) shall annually submit to the Secretary a report that includes the following information:

"(A) The number of children reported to the State during the year as alleged victims of abuse or neglect.

"(B) The number of children for whom an investigation of alleged maltreatment resulted in a determination of substantiated abuse or neglect, the number for whom a report of maltreatment was unsubstantiated, and the number for whom a report of maltreatment was determined to be false.

"(C) The number of families that received preventive services.

"(D) The number of infants abandoned during the year, the number of such infants who were adopted, and the length of time between abandonment and adoption.

"(E) The number of deaths of children resulting from child abuse or neglect.

"(F) The number of deaths occurring while children were in the custody of the State.

"(G) The number of children served by the State independent living program.

"(H) Quantitative measurements demonstrating whether the State is making progress toward the child protection goals identified by the State.

"(I) The types of maltreatment suffered by victims of child abuse and neglect.

"(J) The number of abused and neglected children receiving services.

"(K) The average length of stay of children in out-of-home care.

"(L) The response of the State to the findings and recommendations of the citizen review panels established under section 434.

"(M) Other information as required by the Secretary and agreed to by a majority of the States, including information necessary to ensure a that there is a smooth transition of data from the Adoption and Foster Care Analysis and Reporting Systems and the National Center on Abuse and Neglect Data System to the data reporting system required under this section.

"(c) AUTHORITY OF STATES TO USE ESTIMATES.—

"(1) IN GENERAL.—A State may comply with a requirement to provide precise numerical information described in subsection (b) by submitting an estimate which is obtained through the use of scientifically acceptable sampling methods.

"(2) SECRETARIAL REVIEW OF SAMPLING METHODS.—The Secretary shall periodically review the sampling methods used

by a State to comply with a requirement to provide information described in subsection (b). The Secretary may require a State to revise the sampling methods so used if such methods do not meet scientific standards and shall impose the penalty described in section 431(f)(4) upon a State if a State has not complied with such requirements.

"(d) SCOPE OF STATE PROGRAM FUNDED UNDER THIS SUBPART.—As used in subsection (b), the term 'State program funded under this subpart' includes any equivalent State program.

"SEC. 437. DEFINITIONS.

"For purposes of this subpart, the following definitions shall apply:

"(1) ADMINISTRATIVE REVIEW.—The term 'administrative review' means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

"(2) ADOPTION ASSISTANCE AGREEMENT.—The term 'adoption assistance agreement' means a written agreement, binding on the parties to the agreement, between the State, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum—

"(A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement; and

"(B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.

The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

"(3) CASE PLAN.—The term 'case plan' means a written document which includes at least the following:

"(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 432(a)(1).

"(B) A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his or her own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

"(C) To the extent available and accessible, the health and education records of the child, including—

"(i) the names and addresses of the child's health and educational providers;

"(ii) the child's grade level performance;

"(iii) the child's school record;

"(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

"(v) a record of the child's immunizations;

"(vi) the child's known medical problems;

"(vii) the child's medications; and

"(viii) any other relevant health and education information concerning the child determined to be appropriate by the State.

Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

"(4) CASE REVIEW SYSTEM.—The term 'case review system' means a procedure for assuring that—

"(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

"(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child; and

"(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State in which the home of the parents of the child is located;

"(B) the status of each child is reviewed periodically but no less frequently than once every 6 months by either a court or by administrative review (as defined in paragraph (1)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship;

"(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of com-

petent jurisdiction, or by an administrative body appointed or approved by the court, no later than 18 months after the original placement (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and

"(D) a child's health and education record (as described in paragraph (3)(C)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care.

"(5) CHILD-CARE INSTITUTION.—The term 'child-care institution' means a private child-care institution, or a public child-care institution which accommodates no more than 25 children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

"(6) FOSTER CARE MAINTENANCE PAYMENTS.—

"(A) IN GENERAL.—The term 'foster care maintenance payments' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

"(B) SPECIAL RULE.—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 subpart 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.

"(7) FOSTER FAMILY HOME.—The term 'foster family home' means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing.

"(8) STATE.—The term 'State' means the 50 States and the District of Columbia.

"(9) VOLUNTARY PLACEMENT.—The term 'voluntary placement' means an out-of-home placement of a minor, by or with participation of the State, after the parents or guardians of the minor have requested the assistance of the State and signed a voluntary placement agreement.

"(10) VOLUNTARY PLACEMENT AGREEMENT.—The term 'voluntary placement agreement' means a written agreement, binding on the parties to the agreement, between the State, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.".

SEC. 12702. CONFORMING AMENDMENTS.

(a) REPEAL OF PART E OF TITLE IV OF THE SOCIAL SECURITY ACT.—Part E of title IV of the Social Security Act (42 U.S.C. 671–679) is hereby repealed.

(b) REPEAL OF SECTION 13712 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993.—Section 13712 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 670 note) is hereby repealed.

(c) REPEAL OF SECTION 435.—Section 435 of the Social Security Act, as amended by section 12701, is repealed on April 1, 1996.

SEC. 12703. EFFECTIVE DATE; TRANSITION RULE.

(a) IN GENERAL.—Except as otherwise provided in this subtitle, this subtitle and the amendments made by this subtitle shall take effect as if enacted on October 1, 1995.

(b) TRANSITION RULE.—

(1) STATE OPTION TO CONTINUE PROGRAMS.—

(A) 9-MONTH EXTENSION.—A State may continue the State programs under subpart 2 of part B and part E of title IV of the Social Security Act, as in effect on September 30, 1995 (for purposes of this paragraph, the "State programs") until June 30, 1996.

(B) NO INDIVIDUAL OR FAMILY ENTITLEMENT UNDER CONTINUED STATE PROGRAMS.—Notwithstanding any other provision of law or any rule of law, no individual or family is entitled to aid under the State programs of any State on or after the date of the enactment of this Act.

(C) LIMITATIONS ON FEDERAL OBLIGATIONS.—If a State elects to continue the State programs pursuant to subpara-

graph (A), the total obligations of the Federal Government to the State under subpart 2 of part B and part E of title IV of the Social Security Act (as such subpart and part are in effect on September 30, 1995) after the date of the enactment of this Act shall not exceed an amount equal to—

(I) the grant to the State under section 431(a) (as in effect pursuant to the amendment made by section 12701 of this Act)); minus

(II) any obligations of the Federal Government to the State under such subpart and part (as in effect on September 30, 1995) with respect to expenditures by the State during the period that begins on October 1, 1995, and ends on the day before the date of the enactment of this Act.

(D) SUBMISSION OF STATE PLAN FOR FISCAL YEAR 1996 DEEMED ACCEPTANCE OF GRANT LIMITATIONS AND FORMULA.—The submission of a plan by a State under section 430(a) of the Social Security Act (as in effect pursuant to the amendment made by section 12701 of this Act) for fiscal year 1996 is deemed to constitute the State's acceptance of the grant reduction under subparagraph (C) of this paragraph (including the formula for computing the amount of the reduction).

(2) CLAIMS, ACTIONS, AND PROCEEDINGS.—The amendments made by this subtitle shall not apply with respect to—

(A) powers, duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before the effective date of this subtitle under the provisions amended; and

(B) administrative actions and proceedings commenced before such date, or authorized before such date to be commenced, under such provisions.

(3) CLOSING OUT ACCOUNT FOR THOSE PROGRAMS TERMINATED OR SUBSTANTIALLY MODIFIED BY THIS SUBTITLE.—In closing out accounts, Federal and State officials may use scientifically acceptable statistical sampling techniques. Claims made under programs which are repealed or substantially amended in this subtitle and which involve State expenditures in cases where assistance or services were provided during a prior fiscal year, shall be treated as expenditures during fiscal year 1995 for purposes of reimbursement even if payment was made by a State on or after October 1, 1995. States shall complete the filing of all claims no later than September 30, 1997. Federal department heads shall—

(A) use the single audit procedure to review and resolve any claims in connection with the close out of programs; and

(B) reimburse States for any payments made for assistance or services provided during a prior fiscal year from funds for fiscal year 1995, rather than the funds authorized by this subtitle.

Subtitle H—Child Care

SEC. 12801. SHORT TITLE AND REFERENCES.

(a) SHORT TITLE.—This subtitle may be cited as the "Child Care and Development Block Grant Amendments of 1995".

(b) REFERENCES.—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 Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

SEC. 12802. AUTHORIZATION OF APPROPRIATIONS AND ENTITLEMENT AUTHORITY.

(a) IN GENERAL.—Section 658B (42 U.S.C. 9858) is amended to read as follows:

"SEC. 658B. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out this subchapter $1,000,000,000 for each of the fiscal years 1996 through 2002.".

(b) SOCIAL SECURITY ACT.—Part A of title IV of the Social Security Act (as amended by section 12101) is amended by adding at the end thereof the following new section:

"SEC. 418. FUNDING FOR CHILD CARE.

"(a) GENERAL CHILD CARE ENTITLEMENT.—

"(1) GENERAL ENTITLEMENT.—Subject to the amount appropriated under paragraph (3), each State shall, for the purpose of providing child care assistance, be entitled to payments under a grant under this subsection for a fiscal year in an amount equal to—

"(A) the sum of the total amounts of Federal payments for fiscal year 1994 to the State under section—

"(i) 402(g)(3)(A) of this Act (as such section was in effect before October 1, 1995) for amounts expended for child care pursuant to paragraph (1) of such section;

"(ii) 403(l)(1)(A) of this Act (as so in effect) for amounts expended for child care pursuant to section 402(g)(1)(A) of this Act, in the case of a State with respect to which section 1108 of this Act applies; and

"(iii) 403(n) of this Act (as so in effect) for child care services pursuant to section 402(i) of this Act; or

"(B) the average of the sum of the total amount of Federal payments for each of the fiscal years 1992 through 1994 to the State under the sections referred to in subparagraph (A);

whichever is greater.

"(2) REMAINDER.—

"(A) GRANTS.—The Secretary shall use any amounts appropriated for a fiscal year under paragraph (3), and remaining after grants are awarded under paragraph (1), to make grants to States under this paragraph.

"(B) AMOUNT.—Subject to subparagraph (C), the amount of a grant awarded to a State for a fiscal year

under this paragraph shall be based on the formula used for determining the amount of Federal payments to the State for fiscal year 1994 under section 403(n) (as such section was in effect before October 1, 1995) for child care services pursuant to section 402(i) as such amount relates to the total amount of such Federal payments to all States for such fiscal year.

"(C) MATCHING REQUIREMENT.—The Secretary shall pay to each eligible State in a fiscal year an amount, under a grant under subparagraph (A), equal to the Federal medical assistance percentage for such State for fiscal year 1995 (as defined in section 1905(b)) of so much of the expenditures by the State for child care in such year as exceed the State set-aside for such State under subparagraph (A) for such year and the amount of State expenditures in fiscal year 1995 that equal the non-Federal share for the programs described in subparagraphs (A), (B) and (C) of paragraph (1).

"(3) APPROPRIATION.—There is authorized to be appropriated, and there is appropriated, to carry out this section—

"(A) $1,170,000,000 for fiscal year 1996;

"(B) $1,240,000,000 for fiscal year 1997;

"(C) $1,320,000,000 for fiscal year 1998;

"(D) $1,400,000,000 for fiscal year 1999;

"(E) $1,500,000,000 for fiscal year 2000;

"(F) $1,625,000,000 for fiscal year 2001; and

"(G) $1,745,000,000 for fiscal year 2002.

"(4) REDISTRIBUTION.—With respect to any fiscal year, if the Secretary determines that amounts under any grant awarded to a State under this subsection for such fiscal year will not be used by such State for carrying out the purpose for which the grant is made, the Secretary shall make such amounts available for carrying out such purpose to 1 or more other States which apply for such funds to the extent the Secretary determines that such other States will be able to use such additional amounts for carrying out such purpose. Such available amounts shall be redistributed to a State pursuant to section 402(i) (as such section was in effect before October 1, 1995) by substituting 'the number of children residing in all States applying for such funds' for 'the number of children residing in the United States in the second preceding fiscal year'. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this part, be regarded as part of such State's payment (as determined under this subsection) for such year.

"(b) USE OF FUNDS.—

"(1) IN GENERAL.—Amounts received by a State under this section shall only be used to provide child care assistance.

"(2) USE FOR CERTAIN POPULATIONS.—A State shall ensure that not less than 70 percent of the total amount of funds received by the State in a fiscal year under this section are used to provide child care assistance to families who are receiving assistance under a State program under this part, families who are attempting through work activities to transition off of such

assistance program, and families who are at risk of becoming dependent on such assistance program.

"(c) APPLICATION OF CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT.—Notwithstanding any other provision of law, amounts provided to a State under this section shall be transferred to the lead agency under the Child Care and Development Block Grant Act, integrated by the State into the programs established by the State under such Act, and be subject to requirements and limitations of such Act.

"(d) TRANSITION RULE.—

"(1) IN GENERAL.—Amounts obligated to a State under this section for fiscal year 1996 shall not exceed—

"(A) the amount for which a State is eligible under this section for such fiscal year; less

"(B) the amounts obligated to the State for such fiscal year under the provisions of law referred to in subsection (a)(1)(A) (as such provisions were in effect on the day before the date of enactment of this section).

"(2) ACCEPTANCE OF LIMITATION.—The submission of a plan by a State under section 401(a) for fiscal year 1996 is deemed to constitute the State's acceptance of the grant reductions under paragraph (1). If amounts are provided to a State under this section prior to the submission of such a State plan, the acceptance of such amounts by the State shall constitute the State's acceptance of such reductions.".

SEC. 12803. LEAD AGENCY.

Section 658D(b) (42 U.S.C. 9858b(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "State" the first place that such appears and inserting "governmental or nongovernmental"; and

(B) in subparagraph (C), by inserting "with sufficient time and Statewide distribution of the notice of such hearing," after "hearing in the State"; and

(2) in paragraph (2), by striking the second sentence.

SEC. 12804. APPLICATION AND PLAN.

Section 658E (42 U.S.C. 9858c) is amended—

(1) in subsection (b)—

(A) by striking "implemented—" and all that follows through "(2)" and inserting "implemented"; and

(B) by striking "for subsequent State plans";

(2) in subsection (c)—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) in clause (i) by striking ", other than through assistance provided under paragraph (3)(C),"; and

(II) by striking "except" and all that follows through "1992", and inserting "and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph";

(ii) in subparagraph (B)—

(I) by striking "Provide assurances" and inserting "Certify"; and

(II) by inserting before the period at the end "and provide a detailed description of such procedures";

(iii) in subparagraph (C)—

(I) by striking "Provide assurances" and inserting "Certify"; and

(II) by inserting before the period at the end "and provide a detailed description of how such record is maintained and is made available";

(iv) by amending subparagraph (D) to read as follows:

"(D) CONSUMER EDUCATION INFORMATION.—Certify that the State will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.";

(v) in subparagraph (E), to read as follows:

"(E) COMPLIANCE WITH STATE LICENSING REQUIREMENTS.—

"(i) IN GENERAL.—Certify that the State has in effect licensing requirements applicable to child care services provided within the State, and provide a detailed description of such requirements and of how such requirements are effectively enforced. Nothing in the preceding sentence shall be construed to require that licensing requirements be applied to specific types of providers of child care services.

"(ii) UNIFORM APPLICATION OF REQUIREMENTS.—A certification under clause (i) shall include an assurance by the State that the State shall apply all such licensing requirements in a uniform manner to child care providers of the same type regardless of whether a child care provider is receiving assistance under this subchapter. Nothing in this subchapter shall be construed to require that a State apply, or prohibit a State from applying, licensing requirements with respect to a particular type of child care.

"(iii) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—In lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organization receiving assistance under this subchapter."; and

(vi) by striking subparagraphs (F), (G), (H), (I), and (J) and inserting the following:

"(F) MEETING THE NEEDS OF CERTAIN POPULATIONS.—Demonstrate the manner in which the State will meet the specific child care needs of families who are receiving assistance under a State program under part A of title IV of the Social Security Act, families who are attempting

through work activities to transition off of such assistance program, and families who are at risk of becoming dependent on such assistance program.";

(B) in paragraph (3)—

(i) in subparagraph (A), by striking "(B) and (C)" and inserting "(B) through (D)";

(ii) in subparagraph (B)—

(I) by striking ".—Subject to the reservation contained in subparagraph (C), the" and inserting "AND RELATED ACTIVITIES.—The";

(II) in clause (i) by striking "; and" at the end and inserting a period;

(III) by striking "for—" and all that follows through "section 658E(c)(2)(A)" and inserting "for child care services on sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate"; and

(IV) by striking clause (ii);

(iii) by amending subparagraph (C) to read as follows:

"(C) LIMITATION ON ADMINISTRATIVE COSTS.—Not more than 3 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter. As used in the preceding sentence, the term 'administrative costs' shall not include the costs of providing direct services."; and

(iv) by adding at the end thereof the following:

"(D) ASSISTANCE FOR CERTAIN FAMILIES.—A State shall ensure that a substantial portion of the amounts available (after the State has complied with the requirement of section 419(b)(2) of the Social Security Act) to the State to carry out activities this subchapter in each fiscal year is used to provide assistance to low-income working families other than families described in paragraph (2)(F)."; and 419(b)(2)

(C) in paragraph (4)(A)—

(i) by striking "provide assurances" and inserting "certify";

(ii) in the first sentence by inserting "and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access" before the period; and

(iii) by striking the last sentence.

SEC. 12805. LIMITATION ON STATE ALLOTMENTS.

Section 658F(b) (42 U.S.C. 9858d(b)) is amended—

(1) in paragraph (1), by striking "No" and inserting "Except as provided for in section 658O(c)(6), no"; and

(2) in paragraph (2), by striking "referred to in section 658E(c)(2)(F)".

SEC. 12806. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.

Section 658G (42 U.S.C. 9858e) is amended to read as follows:

"SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.

"A State that receives financial assistance under this subchapter, shall use not less than 3 percent of the total amounts received in each fiscal year for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services).".

SEC. 12807. ADMINISTRATION AND ENFORCEMENT.

Section 658I(b) (42 U.S.C. 9858g(b)) is amended—

(1) in paragraph (1), by striking ", and shall have" and all that follows through "(2)";

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

SEC. 12808. PAYMENTS.

Section 658J(c) (42 U.S.C. 9858h(c)) is amended—

(1) by striking "expended" and inserting "obligated"; and

(2) by striking "3 fiscal years" and inserting "fiscal year".

SEC. 12809. ANNUAL REPORT AND AUDITS.

Section 658K (42 U.S.C. 9858i) is amended—

*(1) in the section heading by striking "***ANNUAL REPORT***" and inserting "***REPORTS***";*

(2) in subsection (a), to read as follows:

"(a) REPORTS.—

"(1) COLLECTION OF INFORMATION BY STATES.—

"(A) IN GENERAL.—A State that receives funds to carry out this subchapter shall collect the information described in subparagraph (B) on a monthly basis.

"(B) REQUIRED INFORMATION.—The information required under this subparagraph shall include, with respect to a family unit receiving assistance under this subchapter information concerning—

"(i) family income;

"(ii) county of residence;

"(iii) the gender and age of children receiving such assistance;

"(iv) whether the family includes only 1 parent;

"(v) the sources of family income, including the amount obtained from (and separately identified)—

"(I) employment, including self-employment;

"(II) cash or other assistance under part A of title IV of the Social Security Act;

"(III) housing assistance;

"(IV) assistance under the Food Stamp Act of 1977; and

"(V) other assistance programs;

"(vi) the number of months the family has received benefits;

"(vii) the type of child care in which the child was enrolled (such as family child care, home care, or center-based child care);

“(viii) whether the child care provider involved was a relative;

“(ix) the cost of child care for such families; and

“(x) the average hours per week of such care;

during the period for which such information is required to be submitted.

“(C) SUBMISSION TO SECRETARY.—A State described in subparagraph (A) shall, on a quarterly basis, submit the information required to be collected under subparagraph (B) to the Secretary.

“(D) SAMPLING.—The Secretary may disapprove the information collected by a State under this paragraph if the State uses sampling methods to collect such information.

“(2) BIANNUAL REPORTS.—Not later than December 31, following the end of the first fiscal year with respect to which the amendments made by the Child Care and Development Block Grants Amendments of 1995 apply, and every 6 months thereafter, a State described in paragraph (1)(A) shall prepare and submit to the Secretary a report that includes aggregate data concerning—

“(A) the number of child care providers that received funding under this subchapter as separately identified based on the types of providers listed in section 658Q(5);

“(B) the monthly cost of child care services, and the portion of such cost that is paid for with assistance provided under this subchapter, listed by the type of child care services provided;

“(C) the number of payments made by the State through vouchers, contracts, cash, and disregards under public benefit programs, listed by the type of child care services provided;

“(D) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided; and

“(E) the total number (without duplication) of children and families served under this subchapter;

during the period for which such report is required to be submitted.”; and

(2) in subsection (b)—

(A) in paragraph (1) by striking “a application” and inserting “an application”;

(B) in paragraph (2) by striking “any agency administering activities that receive” and inserting “the State that receives”; and

(C) in paragraph (4) by striking “entitles” and inserting “entitled”.

SEC. 12810. ALLOTMENTS.

Section 658O (42 U.S.C. 9858m) is amended—

(1) in subsection (a)—

(A) in paragraph (1)

(i) by striking “POSSESSIONS” and inserting “POSSESSIONS”;

(ii) by inserting “and” after “States,”; and

(iii) by striking ", and the Trust Territory of the Pacific Islands"; and

(B) in paragraph (2), by striking "3 percent of the amount appropriated under section 658B" and inserting "1 percent of the aggregate amount of funds available to the State to carry out this subchapter";

(2) in subsection (c)—

(A) in paragraph (5) by striking "our" and inserting "out"; and

(B) by adding at the end thereof the following new paragraph:

"(6) CONSTRUCTION OR RENOVATION OF FACILITIES.—

"(A) REQUEST FOR USE OF FUNDS.—An Indian tribe or tribal organization may submit to the Secretary a request to use amounts provided under this subsection for construction or renovation purposes.

"(B) DETERMINATION.—With respect to a request submitted under subparagraph (A), and except as provided in subparagraph (C), upon a determination by the Secretary that adequate facilities are not otherwise available to an Indian tribe or tribal organization to enable such tribe or organization to carry out child care programs in accordance with this subchapter, and that the lack of such facilities will inhibit the operation of such programs in the future, the Secretary may permit the tribe or organization to use assistance provided under this subsection to make payments for the construction or renovation of facilities that will be used to carry out such programs.

"(C) LIMITATION.—The Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if such use will result in a decrease in the level of child care services provided by the tribe or organization as compared to the level of such services provided by the tribe or organization in the fiscal year preceding the year for which the determination under subparagraph (A) is being made.

"(D) UNIFORM PROCEDURES.—The Secretary shall develop and implement uniform procedures for the solicitation and consideration of requests under this paragraph."; and

(3) in subsection (e), by adding at the end thereof the following new paragraph:

"(4) INDIAN TRIBES OR TRIBAL ORGANIZATIONS.—Any portion of a grant or contract made to an Indian tribe or tribal organization under subsection (c) that the Secretary determines is not being used in a manner consistent with the provision of this subchapter in the period for which the grant or contract is made available, shall be allotted by the Secretary to other tribes or organizations that have submitted applications under subsection (c) in accordance with their respective needs.".

SEC. 12811. DEFINITIONS.

Section 658P (42 U.S.C. 9858n) is amended—

(1) in paragraph (2), in the first sentence by inserting "or as a deposit for child care services if such a deposit is required

of other children being cared for by the provider" after "child care services"; and

(2) by striking paragraph (3);

(3) in paragraph (4)(B), by striking "75 percent" and inserting "85 percent";

(4) in paragraph (5)(B)—

(A) by inserting "great grandchild, sibling (if such provider lives in a separate residence)," after "grandchild,";

(B) by striking "is registered and"; and

(C) by striking "State" and inserting "applicable".

(5) by striking paragraph (10);

(6) in paragraph (3)—

(A) by inserting "or" after "Samoa,"; and

(B) by striking ", and the Trust Territory of the Pacific Islands";

(7) in paragraph (14)—

(A) by striking "The term" and inserting the following: "(A) IN GENERAL.—The term"; and

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

"(B) OTHER ORGANIZATIONS.—Such term includes a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.".

Subtitle I—Child Nutrition Programs

CHAPTER 1—NATIONAL SCHOOL LUNCH ACT

SEC. 12901. TERMINATION OF ADDITIONAL PAYMENT FOR LUNCHES SERVED IN HIGH FREE AND REDUCED PRICE PARTICIPATION SCHOOLS.

Section 4(b)(2) of the National School Lunch Act (42 U.S.C. 1753(b)(2)) is amended by inserting before the period at the end the following: "for the 1995 school year and 1 cent more for each of the 1996 and 1997 school years".

SEC. 12902. DIRECT FEDERAL EXPENDITURES.

(a) ADMINISTRATIVE EXPENSES.—Section 6(a) of the National School Lunch Act (42 U.S.C. 1755(a)) is amended by striking the second and fourth sentences.

(b) AMOUNT OF COMMODITY ASSISTANCE.—Section 6(e) of the Act is amended—

(1) in paragraph (1), by striking subparagraph (E); and

(2) in paragraph (2), by striking the second sentence and inserting the following: "Each State agency shall offer and equitably distribute commodities among schools participating in the school lunch program.".

(c) BREAKFAST COMMODITY ASSISTANCE.—Section 6 of the Act is amended—

(1) by striking subsection (f); and

(2) by redesignating subsection (g) as subsection (f).

(d) COMMODITY ASSISTANCE.—

(1) IN GENERAL.—Section 6(f) of the Act (as redesignated by subsection (c)) is amended by striking "12 percent" and inserting "8 percent".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall become effective on July 1, 1996.

SEC. 12903. VALUE OF FOOD ASSISTANCE.

(a) IN GENERAL.—Section 6(e)(1) of the National School Lunch Act (42 U.S.C. 1755(e)(1)) is amended—

(1) in subparagraph (A)—

(A) in the first sentence—

(i) by inserting "for free and reduced price meals" after "thereof,";

(ii) by striking "11 cents" and inserting "14.5 cents"; and

(iii) by striking "1982" and inserting "1998"; and

(B) by inserting after the first sentence the following: "The national average value of donated foods, or cash payments in lieu thereof, for paid meals, shall be 12 cents, adjusted on July 1, 2001, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions."; and

(2) by striking subparagraph (B) and inserting the following:

"(B) ADJUSTMENTS.—

"(i) IN GENERAL.—Except as provided in subparagraph (A), the value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a 3-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year.

"(ii) METHOD OF ADJUSTMENTS.—Except as otherwise provided in this subparagraph, in the case of each school year, the Secretary shall—

"(I) base the adjustment made under clause (i) on the amount of the unrounded adjustment for the preceding school year;

"(II) adjust the resulting amount in accordance with clause (i); and

"(III) round the result to the nearest lower cent increment.

"(iii) ADJUSTMENT ON JANUARY 1, 1996.—On January 1, 1996, the Secretary shall adjust the value of food assistance for all meals for the remainder of the school year by rounding the previously established value of food assistance to the nearest lower cent increment.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall become effective on July 1, 1996.

SEC. 12904. REDUCED PRICE LUNCHES.

(a) MAXIMUM PRICE.—Section 9(b)(3) of the National School Lunch Act (42 U.S.C. 1758(b)(3)) is amended—

(1) in the last sentence, by striking "The" and inserting "Except as provided in the succeeding 2 sentences, the"; and

(2) by adding at the end the following: "In the case of the school year beginning July 1, 2000, the price charged for a reduced price lunch shall not exceed 45 cents. In the case of the school year beginning July 1, 2001, and each school year thereafter, the price charged for a reduced price lunch shall not exceed 50 cents.".

(b) REDUCED PRICE MEAL PAYMENT.—Section 11(a)(2) of the Act (42 U.S.C. 1759a(a)(2)) is amended—

(1) by striking "cents and the" and inserting "cents. Except as provided in the succeeding 2 sentences, the"; and

(2) by adding at the end the following: "In the case of the school year beginning July 1, 2000, the special assistance factor for reduced price lunches shall be 45 cents less than the special assistance factor for free lunches. In the case of the school year beginning July 1, 2001, and each school year thereafter, the special assistance factor for reduced price lunches shall be 50 cents less than the special assistance factor for free lunches.".

SEC. 12905. LUNCHES, BREAKFASTS, AND SUPPLEMENTS.

(a) IN GENERAL.—Section 11(a)(3)(B) of the National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)) is amended—

(1) by designating the second and third sentences as subparagraphs (C) and (D), respectively; and

(2) by striking subparagraph (D) (as so designated) and inserting the following:

"(D) ROUNDING.—Except as otherwise provided in this paragraph, in the case of each school year, the Secretary shall—

"(i) base the adjustment made under this paragraph on the amount of the unrounded adjustment for the preceding school year;

"(ii) adjust the resulting amount in accordance with subparagraphs (B) and (C); and

"(iii) round the result to the nearest lower cent increment.

"(E) ADJUSTMENT ON JANUARY 1 AND JULY 1, 1996.—The Secretary shall adjust the rates for breakfasts and supplements on January 1, 1996, for the remainder of the school year, and shall adjust the rates for lunches on July 1, 1996, by rounding the previously established rates to the nearest lower cent increment.

"(F) ADJUSTMENT FOR 24-MONTH PERIOD BEGINNING JULY 1, 1996.—In the case of the 24-month period beginning July 1, 1996, the national average payment rates for paid lunches, paid breakfasts, and paid supplements shall be the same as the national average payment rate for paid lunches, paid breakfasts, and paid supplements, respectively, for the school year beginning July 1, 1995, rounded to the nearest lower cent increment.

"(G) ADJUSTMENT FOR SCHOOL YEAR BEGINNING JULY 1, 1998.—In the case of the school year beginning July 1, 1998, the Secretary shall—

"(i) base the adjustments made under this paragraph for—

"(I) paid lunches and paid breakfasts on the amount of the unrounded adjustment for paid lunches for the school year beginning July 1, 1995; and

"(II) paid supplements on the amount of the unrounded adjustment for paid supplements for the school year beginning July 1, 1995;

"(ii) adjust each resulting amount in accordance with subparagraph (C); and

"(iii) round each result to the nearest lower cent increment.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on January 1, 1996.

SEC. 12906. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) ESTABLISHMENT OF PROGRAM.—Section 13(a) of the National School Lunch Act (42 U.S.C. 1761(a)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking "initiate, maintain, and expand" and insert "initiate and maintain"; and

(B) in subparagraph (E) of the second sentence, by striking "the Trust Territory of the Pacific Islands,"; and

(2) in paragraph (7)(A), by striking "Except as provided in subparagraph (C), private" and inserting "Private".

(b) SERVICE INSTITUTIONS.—Section 13(b) of the Act is amended by striking "(b)(1)" and all that follows through the end of paragraph (1) and inserting the following:

"(b) SERVICE INSTITUTIONS.—

"(1) PAYMENTS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, payments to service institutions shall equal the full cost of food service operations (which cost shall include the costs of obtaining, preparing, and serving food, but shall not include administrative costs).

"(B) MAXIMUM AMOUNTS.—Subject to subparagraph (C), payments to any institution under subparagraph (A) shall not exceed—

"(i) $1.82 for each lunch and supper served;

"(ii) $1.13 for each breakfast served; and

"(iii) 46 cents for each meal supplement served.

"(C) ADJUSTMENTS.—Amounts specified in subparagraph (B) shall be adjusted each January 1 to the nearest lower cent increment in accordance with the changes for the 12-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Each adjustment shall be based on the unrounded adjustment for the prior 12-month period.".

(c) ADMINISTRATION OF SERVICE INSTITUTIONS.—Section 13(b)(2) of the Act is amended—

(1) in the first sentence, by striking "four meals" and inserting "3 meals, or 2 meals and 1 supplement,"; and

(2) by striking the second sentence.

(d) REIMBURSEMENTS.—Section 13(c)(2) of the Act is amended—

(1) by striking subparagraph (A);

(2) in subparagraph (B)—

(A) in the first sentence—

(i) by striking ", and such higher education institutions,"; and

(ii) by striking "without application" and inserting "upon showing residence in areas in which poor economic conditions exist"; and

(B) by adding at the end the following: "The higher education institutions referred to in the preceding sentence shall be eligible to participate in the program under this paragraph without application.";

(3) in subparagraph (C)(ii), by striking "severe need"; and

(4) by redesignating subparagraphs (B) through (E), as so amended, as subparagraphs (A) through (D), respectively.

(e) PERMITTING OFFER VERSUS SERVE.—Section 13(f) of the Act is amended—

(1) by redesignating the first through seventh sentences as paragraphs (1) through (7), respectively; and

(2) by adding at the end the following:

"(8) OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child attending a site on school premises operated directly by the authority to refuse not more than 1 item of a meal that the child does not intend to consume. A refusal of an offered food item shall not affect the amount of payments made under this section to a school for the meal.".

(f) EFFECTIVE DATE.—The amendments made by subsection (b) shall become effective on January 1, 1996.

SEC. 12907. CHILD CARE FOOD PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Section 17 of the National School Lunch Act (42 U.S.C. 1766) is amended—

(1) in the section heading, by striking "AND ADULT"; and

(2) in the first sentence of subsection (a), by striking "initiate, maintain, and expand" and inserting "initiate and maintain".

(b) PAYMENTS TO SPONSOR EMPLOYEES.—Paragraph (2) of the last sentence of section 17(a) of the Act (42 U.S.C. 1766(a)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by adding at the end the following:

"(D) in the case of a family or group day care home sponsoring organization that employs more than 1 employee, the organization does not base payments to an employee of the organization on the number of family or group day care homes recruited, managed, or monitored.".

(c) TECHNICAL ASSISTANCE.—The last sentence of section 17(d)(1) of the Act is amended by striking ", and shall provide technical assistance" and all that follows through "its application".

(d) REIMBURSEMENT OF CHILD CARE INSTITUTIONS.—Section 17(f)(2)(B) of the Act (42 U.S.C. 1766(f)(2)(B)) is amended by strik-

ing "two meals and two supplements or three meals and one supplement" and inserting "two meals and one supplement".

(e) IMPROVED TARGETING OF DAY CARE HOME REIMBURSEMENTS.—

(1) RESTRUCTURED DAY CARE HOME REIMBURSEMENTS.—Section 17(f)(3) of the Act is amended by striking "(3)(A) Institutions" and all that follows through the end of subparagraph (A) and inserting the following:

"(3) REIMBURSEMENT OF FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

"(A) REIMBURSEMENT FACTOR.—

"(i) IN GENERAL.—An institution that participates in the program under this section as a family or group day care home sponsoring organization shall be provided, for payment to a home sponsored by the organization, reimbursement factors in accordance with this subparagraph for the cost of obtaining and preparing food and prescribed labor costs involved in providing meals under this section.

"(ii) TIER I FAMILY OR GROUP DAY CARE HOMES.—

"(I) DEFINITION.—In this paragraph, the term 'tier I family or group day care home' means—

"(aa) a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9;

"(bb) a family or group day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

"(cc) a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free or reduced price meals under section 9 and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary.

"(II) REIMBURSEMENT.—Except as provided in subclause (III), a tier I family or group day care home shall be provided reimbursement factors under this clause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the

children meet the income eligibility guidelines for free or reduced price meals under section 9.

"(III) FACTORS.—Except as provided in subclause (IV), the reimbursement factors applied to a home referred to in subclause (II) shall be the factors in effect on the date of enactment of this subclause.

"(IV) ADJUSTMENTS.—The reimbursement factors under this subparagraph shall be adjusted on August 1, 1996, July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this subparagraph shall be rounded to the nearest lower cent increment and based on the unrounded adjustment in effect on June 30 of the preceding school year.

"(iii) TIER II FAMILY OR GROUP DAY CARE HOMES.—

"(I) IN GENERAL.—

"(aa) FACTORS.—Except as provided in subclause (II), with respect to meals or supplements served under this clause by a family or group day care home that does not meet the criteria set forth in clause (ii)(I), the reimbursement factors shall be 90 cents for lunches and suppers, 25 cents for breakfasts, and 10 cents for supplements.

"(bb) ADJUSTMENTS.—The factors shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this item shall be rounded down to the nearest lower cent increment and based on the unrounded adjustment for the preceding 12-month period.

"(cc) REIMBURSEMENT.—A family or group day care home shall be provided reimbursement factors under this subclause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 9.

"(II) OTHER FACTORS.—A family or group day care home that does not meet the criteria set forth in clause (ii)(I) may elect to be provided reimbursement factors determined in accordance with the following requirements:

"(aa) CHILDREN ELIGIBLE FOR FREE OR REDUCED PRICE MEALS.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9, the family or group day care home shall be provided reimbursement factors set by the Secretary in accordance with clause (ii)(III).

"(bb) INELIGIBLE CHILDREN.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes do not meet the income eligibility guidelines, the family or group day care home shall be provided reimbursement factors in accordance with subclause (I).

"(III) INFORMATION AND DETERMINATIONS.—

"(aa) IN GENERAL.—If a family or group day care home elects to claim the factors described in subclause (II), the family or group day care home sponsoring organization serving the home shall collect the necessary income information, as determined by the Secretary, from any parent or other caretaker to make the determinations specified in subclause (II) and shall make the determinations in accordance with rules prescribed by the Secretary.

"(bb) CATEGORICAL ELIGIBILITY.—In making a determination under item (aa), a family or group day care home sponsoring organization may consider a child participating in or subsidized under, or a child with a parent participating in or subsidized under, a federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals under section 9 to be a child who is a member of a household whose income meets the income eligibility guidelines under section 9.

"(cc) FACTORS FOR CHILDREN ONLY.—A family or group day care home may elect to receive the reimbursement factors prescribed under clause (ii)(III) solely for the children participating in a program referred to in item (bb) if the home elects not to have income statements collected from parents or other caretakers.

"(IV) SIMPLIFIED MEAL COUNTING AND REPORTING PROCEDURES.—The Secretary shall prescribe simplified meal counting and reporting procedures for use by a family or group day care home that elects to claim the factors under subclause (II) and

by a family or group day care home sponsoring organization that sponsors the home. The procedures the Secretary prescribes may include 1 or more of the following:

"(aa) Setting an annual percentage for each home of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under clause (ii)(III) and an annual percentage of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under subclause (I), based on the family income of children enrolled in the home in a specified month or other period.

"(bb) Placing a home into 1 of 2 or more reimbursement categories annually based on the percentage of children in the home whose households have incomes that meet the income eligibility guidelines under section 9, with each such reimbursement category carrying a set of reimbursement factors such as the factors prescribed under clause (ii)(III) or subclause (I) or factors established within the range of factors prescribed under clause (ii)(III) and subclause (I).

"(cc) Such other simplified procedures as the Secretary may prescribe.

"(V) MINIMUM VERIFICATION REQUIREMENTS.—The Secretary may establish any necessary minimum verification requirements.".

(2) GRANTS TO STATES TO PROVIDE ASSISTANCE TO FAMILY OR GROUP DAY CARE HOMES.—Section 17(f)(3) of the Act is amended by adding at the end the following:

"(D) GRANTS TO STATES TO PROVIDE ASSISTANCE TO FAMILY OR GROUP DAY CARE HOMES.—

"(i) IN GENERAL.—

"(I) RESERVATION.—From amounts made available to carry out this section, the Secretary shall reserve $5,000,000 of the amount made available for fiscal year 1996.

"(II) PURPOSE.—The Secretary shall use the funds made available under subclause (I) to provide grants to States for the purpose of providing—

"(aa) assistance, including grants, to family and day care home sponsoring organizations and other appropriate organizations, in securing and providing training, materials, automated data processing assistance, and other assistance for the staff of the sponsoring organizations; and

"(bb) training and other assistance to family and group day care homes in the implementation of the amendment to subparagraph

(A) made by section 12907(e)(1) of the Balanced Budget Act of 1995.

"(ii) ALLOCATION.—The Secretary shall allocate from the funds reserved under clause (i)(I)—

"(I) $30,000 in base funding to each State; and

"(II) any remaining amount among the States, based on the number of family day care homes participating in the program in a State during fiscal year 1994 as a percentage of the number of all family day care homes participating in the program during fiscal year 1994.

"(iii) RETENTION OF FUNDS.—Of the amount of funds made available to a State for fiscal year 1996 under clause (i), the State may retain not to exceed 30 percent of the amount to carry out this subparagraph.

"(iv) ADDITIONAL PAYMENTS.—Any payments received under this subparagraph shall be in addition to payments that a State receives under subparagraph (A).".

(3) PROVISION OF DATA.—Section 17(f)(3) of the Act (as amended by paragraph (2)) is further amended by adding at the end the following:

"(E) PROVISION OF DATA TO FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

"(i) CENSUS DATA.—The Secretary shall provide to each State agency administering a child care food program under this section data from the most recent decennial census survey or other appropriate census survey for which the data are available showing which areas in the State meet the requirements of subparagraph (A)(ii)(I)(aa). The State agency shall provide the data to family or group day care home sponsoring organizations located in the State.

"(ii) SCHOOL DATA.—

"(I) IN GENERAL.—A State agency administering the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall provide to approved family or group day care home sponsoring organizations a list of schools serving elementary school children in the State in which not less than ½ of the children enrolled are certified to receive free or reduced price meals. The State agency shall collect the data necessary to create the list annually and provide the list on a timely basis to any approved family or group day care home sponsoring organization that requests the list.

"(II) USE OF DATA FROM PRECEDING SCHOOL YEAR.—In determining for a fiscal year or other annual period whether a home qualifies as a tier I family or group day care home under subparagraph (A)(ii)(I), the State agency administering the program under this section, and a family or group

day care home sponsoring organization, shall use the most current available data at the time of the determination.

"(iii) DURATION OF DETERMINATION.—For purposes of this section, a determination that a family or group day care home is located in an area that qualifies the home as a tier I family or group day care home (as the term is defined in subparagraph (A)(ii)(I)), shall be in effect for 3 years (unless the determination is made on the basis of census data, in which case the determination shall remain in effect until more recent census data are available) unless the State agency determines that the area in which the home is located no longer qualifies the home as a tier I family or group day care home.".

(4) CONFORMING AMENDMENTS.—Section 17(c) of the Act is amended by inserting "except as provided in subsection (f)(3)," after "For purposes of this section," each place it appears in paragraphs (1), (2), and (3).

(f) REIMBURSEMENT.—Section 17(f) of the Act is amended—

(1) in paragraph (3)—

(A) in subparagraph (B), by striking the third and fourth sentences; and

(B) in subparagraph (C)—

(i) in clause (i)—

(I) by striking "(i)";

(II) in the first sentence, by striking "and expansion funds" and all that follows through "rural areas";

(III) by striking the second sentence; and

(IV) by striking "and expansion funds" each place it appears; and

(ii) by striking clause (ii); and

(2) by striking paragraph (4).

(g) ELIMINATION OF STATE PAPERWORK AND OUTREACH BURDEN.—Section 17 of the Act is amended by striking subsection (k) and inserting the following:

"(k) TRAINING AND TECHNICAL ASSISTANCE.—A State participating in the program established under this section shall provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the program. The Secretary shall assist the State in developing plans to fulfill the requirements of this subsection.".

(h) MODIFICATION OF ADULT CARE FOOD PROGRAM.—Section 17(o) of the Act is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking "adult day care centers" and inserting "day care centers for chronically impaired disabled persons" ; and

(B) by striking "to persons 60 years of age or older or"; and

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking "adult day care center" and inserting "day care center for chronically impaired disabled persons"; and

(ii) in clause (i)—

(I) by striking "adult";

(II) by striking "adults" and inserting "persons"; and

(III) by striking "or persons 60 years of age or older"; and

(B) in subparagraph (B), by striking "adult day care services" and inserting "day care services for chronically impaired disabled persons".

(i) UNNEEDED PROVISIONS.—Section 17 of the Act is amended—

(1) by striking subsections (b) and (q);

(2) by redesignating subsections (c) through (p), as so amended, as subsections (b) through (o), respectively; and

(3) in subsection (e), as redesignated by paragraph (2)—

(A) in paragraph (2)(A), by striking "subsection (c)" and inserting "subsection (b)"; and

(B) in paragraph (3)(C), by striking "subsection (d)" and inserting "subsection (c)".

(j) CONFORMING AMENDMENTS.—

(1) Section 11(a)(3)(A)(iv) of the Act (42 U.S.C. 1759a(a)(3)(A)(iv)) is amended by striking "17(c)" and inserting "17(b)".

(2) Section 17A(c) of the Act (42 U.S.C. 1766a(c)) is amended by striking "17(c)(3)" and inserting "17(b)(3)".

(3) Section 17B(f) of the Act (42 U.S.C. 1766b(f)) is amended—

(A) in the subsection heading, by striking "AND ADULT"; and

(B) in paragraph (1), by striking "and adult".

(4) Section 18(e)(3)(B) of the Act (42 U.S.C. 1769(e)(3)(B)) is amended by striking "and adult".

(5) Section 25(b)(1)(C) of the Act (42 U.S.C. 1769f(b)(1)(C)) is amended by striking "and adult".

(6) Section 3(1) of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103–448) is amended by striking "and adult".

(k) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall become effective on the date of enactment of this Act.

(2) IMPROVED TARGETING OF DAY CARE HOME REIMBURSEMENTS.—The amendments made by paragraphs (1), (3), and (4) of subsection (e) shall become effective on August 1, 1996.

(3) REGULATIONS.—

(A) INTERIM REGULATIONS.—Not later than February 1, 1996, the Secretary shall issue interim regulations to implement—

(i) the amendments made by paragraphs (1), (3), and (4) of subsection (e); and

(ii) section 17(f)(3)(C) of the National School Lunch Act (42 U.S.C. 1766(f)(3)(C)).

(B) FINAL REGULATIONS.—Not later than August 1, 1996, the Secretary shall issue final regulations to implement the provisions of law referred to in subparagraph (A).

(l) STUDY OF IMPACT OF AMENDMENTS ON PROGRAM PARTICIPATION AND FAMILY DAY CARE LICENSING.—

(1) IN GENERAL.—The Secretary of Agriculture, in conjunction with the Secretary of Health and Human Services, shall study the impact of the amendments made by this section on—

(A) the number of family day care homes participating in the child care food program established under section 17 of the National School Lunch Act (42 U.S.C. 1766);

(B) the number of day care home sponsoring organizations participating in the program;

(C) the number of day care homes that are licensed, certified, registered, or approved by each State in accordance with regulations issued by the Secretary;

(D) the rate of growth of the numbers referred to in subparagraphs (A) through (C);

(E) the nutritional adequacy and quality of meals served in family day care homes that—

(i) received reimbursement under the program prior to the amendments made by this section but do not receive reimbursement after the amendments made by this section; or

(ii) received full reimbursement under the program prior to the amendments made by this section but do not receive full reimbursement after the amendments made by this section; and

(F) the proportion of low-income children participating in the program prior to the amendments made by this section and the proportion of low-income children participating in the program after the amendments made by this section.

(2) REQUIRED DATA.—Each State agency participating in the child care food program under section 17 of the National School Lunch Act (42 U.S.C. 1766) shall submit to the Secretary data on—

(A) the number of family day care homes participating in the program on July 31, 1996, and July 31, 1997;

(B) the number of family day care homes licensed, certified, registered, or approved for service on July 31, 1996, and July 31, 1997; and

(C) such other data as the Secretary may require to carry out this subsection.

SEC. 12908. PILOT PROJECTS.

(a) UNIVERSAL FREE PILOT.—Section 18(d) of the National School Lunch Act (42 U.S.C. 1769(d)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(b) DEMO PROJECT OUTSIDE SCHOOL HOURS.—Section 18(e) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

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

(ii) by striking "shall" and inserting "may"; and

(B) by striking subparagraph (B); and

(2) by striking paragraph (5) and inserting the following:

"(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 1997 and 1998.".

SEC. 12909. INFORMATION CLEARINGHOUSE.

Section 26 of the National School Lunch Act (42 U.S.C. 1769g) is repealed.

CHAPTER 2—CHILD NUTRITION ACT

SEC. 12921. SPECIAL MILK PROGRAM.

(a) IN GENERAL.—Section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)) is amended—

(1) in paragraph (3), by striking "the Trust Territory of the Pacific Islands" and inserting "the Commonwealth of the Northern Mariana Islands"; and

(2) by striking paragraph (8) and inserting the following:

"(8) ADJUSTMENTS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, in the case of each school year, the Secretary shall—

"(i) base the adjustment made under paragraph (7) on the amount of the unrounded adjustment for the preceding school year;

"(ii) adjust the resulting amount in accordance with paragraph (7); and

"(iii) round the result to the nearest lower cent increment.

"(B) ADJUSTMENT ON JANUARY 1, 1996.—On January 1, 1996, the Secretary shall adjust the minimum rate for the remainder of the school year by rounding the previously established minimum rate to the nearest lower cent increment.

"(C) ADJUSTMENT FOR 24-MONTH PERIOD BEGINNING JULY 1, 1996.—In the case of the 24-month period beginning July 1, 1996, the minimum rate shall be the same as the minimum rate in effect on June 30, 1996.

"(D) ADJUSTMENT FOR SCHOOL YEAR BEGINNING JULY 1, 1998.—In the case of the school year beginning July 1, 1998, the Secretary shall—

"(i) base the adjustment made under paragraph (7) on the amount of the unrounded adjustment for the minimum rate for the school year beginning July 1, 1995;

"(ii) adjust the resulting amount to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor for the most recent 12-month period for which the data are available; and

"(iii) round the result to the nearest lower cent increment.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on January 1, 1996.

SEC. 12922. FREE AND REDUCED PRICE BREAKFASTS.

(a) IN GENERAL.—Section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended—

(1) in the second sentence of paragraph (1)(B), by striking ", adjusted to the nearest one-fourth cent" and inserting "(as adjusted pursuant to section 11(a) of the National School Lunch Act (42 U.S.C. 1759a(a))"; and

(2) in paragraph (2)(B)(ii)—

(A) by striking "nearest one-fourth cent" and inserting "nearest lower cent increment for the applicable school year"; and

(B) by inserting before the period at the end the following: ", and the adjustment required by this clause shall be based on the unrounded adjustment for the preceding school year".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on July 1, 1996.

SEC. 12923. CONFORMING REIMBURSEMENT FOR PAID BREAKFASTS AND LUNCHES.

(a) IN GENERAL.—The last sentence of section 4(b)(1)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(B)) is amended by striking "8.25 cents" and all that follows through "Act)" and inserting "the same as the national average lunch payment for paid meals established under section 4(b) of the National School Lunch Act (42 U.S.C. 1753(b))".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on January 1, 1996.

SEC. 12924. SCHOOL BREAKFAST PROGRAM AUTHORIZATION.

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) is amended by striking subsections (f) and (g).

SEC. 12925. MISCELLANEOUS PROVISIONS AND DEFINITIONS.

Section 15 of the Child Nutrition Act of 1966 (42 U.S.C. 1784) is amended—

(1) in paragraph (1), by striking "the Trust Territory of the Pacific Islands" and inserting "the Commonwealth of the Northern Mariana Islands"; and

(2) in the first sentence of paragraph (3)—

(A) in subparagraph (A), by inserting "and" at the end; and

(B) by striking ", and (C)" and all that follows through "Governor of Puerto Rico".

SEC. 12926. NUTRITION EDUCATION AND TRAINING.

(a) USE OF FUNDS.—Section 19(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(f)) is amended—

(1) in paragraph (1)—

(A) by striking subparagraph (B); and

(B) in subparagraph (A)—

(i) by striking "(A)";

(ii) by striking clauses (ix) through (xix);

(iii) by redesignating clauses (i) through (viii) and (xx) as subparagraphs (A) through (H) and (I), respectively; and

(iv) in subparagraph (H), as so redesignated, by inserting "and" at the end;

(2) by striking paragraphs (2) and (4); and

(3) by redesignating paragraph (3) as paragraph (2).

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 19(i) of the Act is amended—

(1) in the first sentence of paragraph (2)(A), by striking "and each succeeding fiscal year";

(2) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

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

"(2) FISCAL YEARS 1997 THROUGH 2002.—

"(A) IN GENERAL.—There are authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 1997 through 2002.

"(B) GRANTS.—

"(i) IN GENERAL.—Grants to each State from the amounts made available under subparagraph (A) shall be based on a rate of 50 cents for each child enrolled in schools or institutions within the State, except that no State shall receive an amount less than $75,000 per fiscal year.

"(ii) INSUFFICIENT FUNDS.—If the amount made available for any fiscal year is insufficient to pay the amount to which each State is entitled under clause (i), the amount of each grant shall be ratably reduced.".

Subtitle J—Food Stamps and Commodity Distribution

SEC. 13001. SHORT TITLE.

This subtitle may be cited as the "Food Stamp Reform and Commodity Distribution Act of 1995".

CHAPTER 1—FOOD STAMP PROGRAM

SEC. 13011. DEFINITION OF CERTIFICATION PERIOD.

Section 3(c) of the Food Stamp Act of 1977 (7 U.S.C. 2012(c)) is amended by striking "Except as provided" and all that follows and inserting the following: "The certification period shall not exceed 12 months, except that the certification period may be up to 24 months if all adult household members are elderly or disabled. A State agency shall have at least 1 contact with each certified household every 12 months.".

SEC. 13012. DEFINITION OF COUPON.

Section 3(d) of the Food Stamp Act of 1977 (7 U.S.C. 2012(d)) is amended by striking "or type of certificate" and inserting "type of certificate, authorization card, cash or check issued in lieu of a coupon, or an access device, including an electronic benefit transfer card or personal identification number,".

SEC. 13013. TREATMENT OF CHILDREN LIVING AT HOME.

The second sentence of section 3(i) of the Food Stamp Act of 1977 (7 U.S.C. 2012(i)) is amended by striking "(who are not themselves parents living with their children or married and living with their spouses)".

SEC. 13014. OPTIONAL ADDITIONAL CRITERIA FOR SEPARATE HOUSEHOLD DETERMINATIONS.

Section 3(i) of the Food Stamp Act of 1977 (7 U.S.C. 2012(i)) is amended by inserting after the third sentence the following: "Notwithstanding the preceding sentences, a State may establish criteria that prescribe when individuals who live together, and who would be allowed to participate as separate households under the preceding sentences, shall be considered a single household, without regard to the common purchase of food and preparation of meals.".

SEC. 13015. ADJUSTMENT OF THRIFTY FOOD PLAN.

The second sentence of section 3(o) of the Food Stamp Act of 1977 (7 U.S.C. 2012(o)) is amended—

(1) by striking "shall (1) make" and inserting the following: "shall—

"(1) make";

(2) by striking "scale, (2) make" and inserting "scale;

"(2) make";

(3) by striking "Alaska, (3) make" and inserting the following: "Alaska;

"(3) make"; and

(4) by striking "Columbia, (4) through" and all that follows through the end of the subsection and inserting the following: "Columbia; and

"(4) on October 1, 1996, and each October 1 thereafter, adjust the cost of the diet to reflect the cost of the diet, in the preceding June, and round the result to the nearest lower dollar increment for each household size, except that on October 1, 1996, the Secretary may not reduce the cost of the diet in effect on September 30, 1996.".

SEC. 13016. DEFINITION OF HOMELESS INDIVIDUAL.

Section 3(s)(2)(C) of the Food Stamp Act of 1977 (7 U.S.C. 2012(s)(2)(C)) is amended by inserting "for not more than 90 days" after "temporary accommodation".

SEC. 13017. STATE OPTION FOR ELIGIBILITY STANDARDS.

Section 5(b) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)) is amended by striking "(b) The Secretary" and inserting the following:

"(b) ELIGIBILITY STANDARDS.—Except as otherwise provided in this Act, the Secretary".

SEC. 13018. EARNINGS OF STUDENTS.

Section 5(d)(7) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)(7)) is amended by striking "21" and inserting "19".

SEC. 13019. ENERGY ASSISTANCE.

(a) IN GENERAL.—Section 5(d) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)) is amended by striking paragraph (11) and inserting the following: "(11) a 1-time payment or allowance made under a Federal or State law for the costs of weatherization or emer-

gency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device,".

(b) CONFORMING AMENDMENTS.—

(1) Section 5(k) of the Act (7 U.S.C. 2014(k)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "plan for aid to families with dependent children approved" and inserting "program funded"; and

(ii) in subparagraph (B), by striking ", not including energy or utility-cost assistance,";

(B) in paragraph (2), by striking subparagraph (C) and inserting the following:

"(C) a payment or allowance described in subsection (d)(11);"; and

(C) by adding at the end the following:

"(4) THIRD PARTY ENERGY ASSISTANCE PAYMENTS.—

"(A) ENERGY ASSISTANCE PAYMENTS.—For purposes of subsection (d)(1), a payment made under a Federal or State law to provide energy assistance to a household shall be considered money payable directly to the household.

"(B) ENERGY ASSISTANCE EXPENSES.—For purposes of subsection (e)(7), an expense paid on behalf of a household under a Federal or State law to provide energy assistance shall be considered an out-of-pocket expense incurred and paid by the household.".

(2) Section 2605(f) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(f)) is amended—

(A) by striking "(f)(1) Notwithstanding" and inserting "(f) Notwithstanding";

(B) in paragraph (1), by striking "food stamps,"; and

(C) by striking paragraph (2).

SEC. 13020. DEDUCTIONS FROM INCOME.

(a) IN GENERAL.—Section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2014) is amended by striking subsection (e) and inserting the following:

"(e) DEDUCTIONS FROM INCOME.—

"(1) STANDARD DEDUCTION.—The Secretary shall allow a standard deduction for each household in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands of the United States of $134, $229, $189, $269, and $118, respectively.

"(2) EARNED INCOME DEDUCTION.—

"(A) DEFINITION OF EARNED INCOME.—In this paragraph, the term 'earned income' does not include income excluded by subsection (d) or any portion of income earned under a work supplementation or support program, as defined under section 16(b), that is attributable to public assistance.

"(B) DEDUCTION.—Except as provided in subparagraph (C), a household with earned income shall be allowed a deduction of 20 percent of all earned income (other than income excluded by subsection (d)) to compensate for taxes, other mandatory deductions from salary, and work expenses.

"(C) EXCEPTION.—The deduction described in subparagraph (B) shall not be allowed with respect to determining an overissuance due to the failure of a household to report earned income in a timely manner.

"(3) DEPENDENT CARE DEDUCTION.—

"(A) IN GENERAL.—A household shall be entitled, with respect to expenses (other than excluded expenses described in subparagraph (B)) for dependent care, to a dependent care deduction, the maximum allowable level of which shall be $200 per month for each dependent child under 2 years of age and $175 per month for each other dependent, for the actual cost of payments necessary for the care of a dependent if the care enables a household member to accept or continue employment, or training or education that is preparatory for employment.

"(B) EXCLUDED EXPENSES.—The excluded expenses referred to in subparagraph (A) are—

"(i) expenses paid on behalf of the household by a third party;

"(ii) amounts made available and excluded for the expenses referred to in subparagraph (A) under subsection (d)(3); and

"(iii) expenses that are paid under section 6(d)(4).

"(4) DEDUCTION FOR CHILD SUPPORT PAYMENTS.—

"(A) IN GENERAL.—A household shall be entitled to a deduction for child support payments made by a household member to or for an individual who is not a member of the household if the household member is legally obligated to make the payments.

"(B) METHODS FOR DETERMINING AMOUNT.—The Secretary may prescribe by regulation the methods, including calculation on a retrospective basis, that a State agency shall use to determine the amount of the deduction for child support payments.

"(5) HOMELESS SHELTER ALLOWANCE.—A State agency may develop a standard homeless shelter allowance, which shall not exceed $139 per month, for such expenses as may reasonably be expected to be incurred by households in which all members are homeless individuals but are not receiving free shelter throughout the month. A State agency that develops the allowance may use the allowance in determining eligibility and allotments for the households, except that the State agency may prohibit the use of the allowance for households with extremely low shelter costs.

"(6) EXCESS MEDICAL EXPENSE DEDUCTION.—

"(A) IN GENERAL.—A household containing an elderly or disabled member shall be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to an excess medical expense deduction for the portion of the actual costs of allowable medical expenses, incurred by the elderly or disabled member, exclusive of special diets, that exceeds $35 per month.

"(B) METHOD OF CLAIMING DEDUCTION.—

"(i) IN GENERAL.—A State agency shall offer an eligible household under subparagraph (A) a method of claiming a deduction for recurring medical expenses that are initially verified under the excess medical expense deduction in lieu of submitting information or verification on actual expenses on a monthly basis.

"(ii) METHOD.—The method described in clause (i) shall—

"(I) be designed to minimize the burden for the eligible elderly or disabled household member choosing to deduct the recurrent medical expenses of the member pursuant to the method;

"(II) rely on reasonable estimates of the expected medical expenses of the member for the certification period (including changes that can be reasonably anticipated based on available information about the medical condition of the member, public or private medical insurance coverage, and the current verified medical expenses incurred by the member); and

"(III) not require further reporting or verification of a change in medical expenses if such a change has been anticipated for the certification period.

"(7) EXCESS SHELTER EXPENSE DEDUCTION.—

"(A) IN GENERAL.—A household shall be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 percent of monthly household income after all other applicable deductions have been allowed.

"(B) MAXIMUM AMOUNT OF DEDUCTION.—In the case of a household that does not contain an elderly or disabled individual, the excess shelter expense deduction shall not exceed—

"(i) in the 48 contiguous States and the District of Columbia, $247 per month; and

"(ii) in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $429, $353, $300, and $182 per month, respectively.

"(C) STANDARD UTILITY ALLOWANCE.—

"(i) IN GENERAL.—In computing the excess shelter expense deduction, a State agency may use a standard utility allowance in accordance with regulations promulgated by the Secretary, except that a State agency may use an allowance that does not fluctuate within a year to reflect seasonal variations.

"(ii) RESTRICTIONS ON HEATING AND COOLING EXPENSES.—An allowance for a heating or cooling expense may not be used in the case of a household that—

"(I) does not incur a heating or cooling expense, as the case may be;

"(II) does incur a heating or cooling expense but is located in a public housing unit that has central utility meters and charges households, with regard to the expense, only for excess utility costs; or

"(III) shares the expense with, and lives with, another individual not participating in the food stamp program, another household participating in the food stamp program, or both, unless the allowance is prorated between the household and the other individual, household, or both.

"(iii) MANDATORY ALLOWANCE.—

"(I) IN GENERAL.—A State agency may make the use of a standard utility allowance mandatory for all households with qualifying utility costs if—

"(aa) the State agency has developed 1 or more standards that include the cost of heating and cooling and 1 or more standards that do not include the cost of heating and cooling; and

"(bb) the Secretary finds that the standards will not result in an increased cost to the Secretary.

"(II) HOUSEHOLD ELECTION.—A State agency that has not made the use of a standard utility allowance mandatory under subclause (I) shall allow a household to switch, at the end of a certification period, between the standard utility allowance and a deduction based on the actual utility costs of the household.

"(iv) AVAILABILITY OF ALLOWANCE TO RECIPIENTS OF ENERGY ASSISTANCE.—

"(I) IN GENERAL.—Subject to subclause (II), if a State agency elects to use a standard utility allowance that reflects heating or cooling costs, the standard utility allowance shall be made available to households receiving a payment, or on behalf of which a payment is made, under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) or other similar energy assistance program, if the household still incurs out-of-pocket heating or cooling expenses in excess of any assistance paid on behalf of the household to an energy provider.

"(II) SEPARATE ALLOWANCE.—A State agency may use a separate standard utility allowance for households on behalf of which a payment described in subclause (I) is made, but may not be required to do so.

"(III) STATES NOT ELECTING TO USE SEPARATE ALLOWANCE.—A State agency that does not elect to use a separate allowance but makes a single standard utility allowance available to households incurring heating or cooling expenses (other than a

household described in subclause (I) or (II) of subparagraph (C)(ii)) may not be required to reduce the allowance due to the provision (directly or indirectly) of assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

“(IV) PRORATION OF ASSISTANCE.—For the purpose of the food stamp program, assistance provided under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) shall be considered to be prorated over the entire heating or cooling season for which the assistance was provided.”.

(b) CONFORMING AMENDMENT.—Section 11(e)(3) of the Act (7 U.S.C. 2020(e)(3)) is amended by striking “. Under rules prescribed” and all that follows through “verifies higher expenses”.

SEC. 13021. VEHICLE ALLOWANCE.

Section 5(g) of the Food Stamp Act of 1977 (7 U.S.C. 2014(g)) is amended by striking paragraph (2) and inserting the following:

“(2) INCLUDED ASSETS.—

“(A) IN GENERAL.—Subject to the other provisions of this paragraph, the Secretary shall, in prescribing inclusions in, and exclusions from, financial resources, follow the regulations in force as of June 1, 1982 (other than those relating to licensed vehicles and inaccessible resources).

“(B) ADDITIONAL INCLUDED ASSETS.—The Secretary shall include in financial resources—

“(i) any boat, snowmobile, or airplane used for recreational purposes;

“(ii) any vacation home;

“(iii) any mobile home used primarily for vacation purposes;

“(iv) subject to subparagraph (C), any licensed vehicle that is used for household transportation or to obtain or continue employment to the extent that the fair market value of the vehicle exceeds $4,600; and

“(v) any savings or retirement account (including an individual account), regardless of whether there is a penalty for early withdrawal.

“(C) EXCLUDED VEHICLES.—A vehicle (and any other property, real or personal, to the extent the property is directly related to the maintenance or use of the vehicle) shall not be included in financial resources under this paragraph if the vehicle is—

“(i) used to produce earned income;

“(ii) is necessary for the transportation of a physically disabled household member; or

“(iii) is depended on by a household to carry fuel for heating or water for home use and provides the primary source of fuel or water, respectively, for the household.”.

SEC. 13022. VENDOR PAYMENTS FOR TRANSITIONAL HOUSING COUNTED AS INCOME.

Section 5(k)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2014(k)(2)) is amended—

(1) by striking subparagraph (F); and

(2) by redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively.

SEC. 13023. DOUBLED PENALTIES FOR VIOLATING FOOD STAMP PROGRAM REQUIREMENTS.

Section 6(b)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2015(b)(1)) is amended—

(1) in clause (i), by striking "six months" and inserting "1 year"; and

(2) in clause (ii), by striking "1 year" and inserting "2 years".

SEC. 13024. DISQUALIFICATION OF CONVICTED INDIVIDUALS.

Section 6(b)(1)(iii) of the Food Stamp Act of 1977 (7 U.S.C. 2015(b)(1)(iii)) is amended—

(1) in subclause (II), by striking "or" at the end;

(2) in subclause (III), by striking the period at the end and inserting "; or"; and

(3) by inserting after subclause (III) the following:

"(IV) a conviction of an offense under subsection (b) or (c) of section 15 involving an item covered by subsection (b) or (c) of section 15 having a value of $500 or more.".

SEC. 13025. DISQUALIFICATION.

(a) IN GENERAL.—Section 6(d) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)) is amended by striking "(d)(1) Unless otherwise exempted by the provisions" and all that follows through the end of paragraph (1) and inserting the following:

"(d) CONDITIONS OF PARTICIPATION.—

"(1) WORK REQUIREMENTS.—

"(A) IN GENERAL.—No physically and mentally fit individual over the age of 15 and under the age of 60 shall be eligible to participate in the food stamp program if the individual—

"(i) refuses, at the time of application and every 12 months thereafter, to register for employment in a manner prescribed by the Secretary;

"(ii) refuses without good cause to participate in an employment and training program under paragraph (4), to the extent required by the State agency;

"(iii) refuses without good cause to accept an offer of employment, at a site or plant not subject to a strike or lockout at the time of the refusal, at a wage not less than the higher of—

"(I) the applicable Federal or State minimum wage; or

"(II) 80 percent of the wage that would have governed had the minimum hourly rate under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) been applicable to the offer of employment;

"(iv) refuses without good cause to provide a State agency with sufficient information to allow the State agency to determine the employment status or the job availability of the individual;

"(v) voluntarily and without good cause—

"(I) quits a job; or

"(II) reduces work effort and, after the reduction, the individual is working less than 30 hours per week; or

"(vi) fails to comply with section 20.

"(B) HOUSEHOLD INELIGIBILITY.—If an individual who is the head of a household becomes ineligible to participate in the food stamp program under subparagraph (A), the household shall, at the option of the State agency, become ineligible to participate in the food stamp program for a period, determined by the State agency, that does not exceed the lesser of—

"(i) the duration of the ineligibility of the individual determined under subparagraph (C); or

"(ii) 180 days.

"(C) DURATION OF INELIGIBILITY.—

"(i) FIRST VIOLATION.—The first time that an individual becomes ineligible to participate in the food stamp program under subparagraph (A), the individual shall remain ineligible until the later of—

"(I) the date the individual becomes eligible under subparagraph (A);

"(II) the date that is 1 month after the date the individual became ineligible; or

"(III) a date determined by the State agency that is not later than 3 months after the date the individual became ineligible.

"(ii) SECOND VIOLATION.—The second time that an individual becomes ineligible to participate in the food stamp program under subparagraph (A), the individual shall remain ineligible until the later of—

"(I) the date the individual becomes eligible under subparagraph (A);

"(II) the date that is 3 months after the date the individual became ineligible; or

"(III) a date determined by the State agency that is not later than 6 months after the date the individual became ineligible.

"(iii) THIRD OR SUBSEQUENT VIOLATION.—The third or subsequent time that an individual becomes ineligible to participate in the food stamp program under subparagraph (A), the individual shall remain ineligible until the later of—

"(I) the date the individual becomes eligible under subparagraph (A);

"(II) the date that is 6 months after the date the individual became ineligible;

"(III) a date determined by the State agency; or

"(IV) at the option of the State agency, permanently.

"(D) ADMINISTRATION.—

"(i) GOOD CAUSE.—The Secretary shall determine the meaning of good cause for the purpose of this paragraph.

"(ii) VOLUNTARY QUIT.—The Secretary shall determine the meaning of voluntarily quitting and reducing work effort for the purpose of this paragraph.

"(iii) DETERMINATION BY STATE AGENCY.—

"(I) IN GENERAL.—Subject to subclause (II) and clauses (i) and (ii), a State agency shall determine—

"(aa) the meaning of any term in subparagraph (A);

"(bb) the procedures for determining whether an individual is in compliance with a requirement under subparagraph (A); and

"(cc) whether an individual is in compliance with a requirement under subparagraph (A).

"(II) NOT LESS RESTRICTIVE.—A State agency may not determine a meaning, procedure, or determination under subclause (I) to be less restrictive than a comparable meaning, procedure, or determination under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

"(iv) STRIKE AGAINST THE GOVERNMENT.—For the purpose of subparagraph (A)(v), an employee of the Federal Government, a State, or a political subdivision of a State, who is dismissed for participating in a strike against the Federal Government, the State, or the political subdivision of the State shall be considered to have voluntarily quit without good cause.

"(v) SELECTING A HEAD OF HOUSEHOLD.—

"(I) IN GENERAL.—For the purpose of this paragraph, the State agency shall allow the household to select any adult parent of a child in the household as the head of the household if all adult household members making application under the food stamp program agree to the selection.

"(II) TIME FOR MAKING DESIGNATION.—A household may designate the head of the household under subclause (I) each time the household is certified for participation in the food stamp program, but may not change the designation during a certification period unless there is a change in the composition of the household.

"(vi) CHANGE IN HEAD OF HOUSEHOLD.—If the head of a household leaves the household during a period in which the household is ineligible to participate in the food stamp program under subparagraph (B)—

"(I) the household shall, if otherwise eligible, become eligible to participate in the food stamp program; and

"(II) if the head of the household becomes the head of another household, the household that becomes headed by the individual shall become ineligible to participate in the food stamp program for the remaining period of ineligibility.".

(b) CONFORMING AMENDMENT.—

(1) The second sentence of section 17(b)(2) of the Act (7 U.S.C. 2026(b)(2)) is amended by striking "6(d)(1)(i)" and inserting "6(d)(1)(A)(i)".

(2) Section 20 of the Act (7 U.S.C. 2029) is amended by striking subsection (f) and inserting the following:

"(f) DISQUALIFICATION.—An individual or a household may become ineligible under section 6(d)(1) to participate in the food stamp program for failing to comply with this section.".

SEC. 13026. CARETAKER EXEMPTION.

Section 6(d)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(2)) is amended by striking subparagraph (B) and inserting the following: "(B) a parent or other member of a household with responsibility for the care of (i) a dependent child under the age of 6 or any lower age designated by the State agency that is not under the age of 1, or (ii) an incapacitated person;".

SEC. 13027. EMPLOYMENT AND TRAINING.

(a) IN GENERAL.—Section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4)) is amended—

(1) in subparagraph (A)—

(A) by striking "Not later than April 1, 1987, each" and inserting "Each";

(B) by inserting "work," after "skills, training,"; and

(C) by adding at the end the following: "Each component of an employment and training program carried out under this paragraph shall be delivered through a statewide workforce development system, unless the component is not available locally through the statewide workforce development system.";

(2) in subparagraph (B)—

(A) in the matter preceding clause (i), by striking the colon at the end and inserting the following: ", except that the State agency shall retain the option to apply employment requirements prescribed under this subparagraph to a program applicant at the time of application:";

(B) in clause (i), by striking "with terms and conditions" and all that follows through "time of application"; and

(C) in clause (iv)—

(i) by striking subclauses (I) and (II); and

(ii) by redesignating subclauses (III) and (IV) as subclauses (I) and (II), respectively;

(3) in subparagraph (D)—

(A) in clause (i), by striking "to which the application" and all that follows through "30 days or less";

(B) in clause (ii), by striking "but with respect" and all that follows through "child care"; and

(C) in clause (iii), by striking ", on the basis of" and all that follows through "clause (ii)" and inserting "the exemption continues to be valid";

(4) in subparagraph (E), by striking the third sentence;

(5) in subparagraph (G)—

(A) by striking "(G)(i) The State" and inserting "(G) The State"; and

(B) by striking clause (ii);

(6) in subparagraph (H), by striking "(H)(i) The Secretary" and all that follows through "(ii) Federal funds" and inserting "(H) Federal funds";

(7) in subparagraph (I)(i)(II), by striking ", or was in operation," and all that follows through "Social Security Act" and inserting the following: "), except that no such payment or reimbursement shall exceed the applicable local market rate";

(8)(A) by striking subparagraphs (K) and (L) and inserting the following:

"(K) LIMITATION ON FUNDING.—Notwithstanding any other provision of this paragraph, the amount of funds a State agency uses to carry out this paragraph (including under subparagraph (I)) for participants who are receiving benefits under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) shall not exceed the amount of funds the State agency used in fiscal year 1995 to carry out this paragraph for participants who were receiving benefits in fiscal year 1995 under a State program funded under part A of title IV of the Act (42 U.S.C. 601 et seq.)."; and

(B) by redesignating subparagraphs (M) and (N) as subparagraphs (L) and (M), respectively; and

(9) in subparagraph (L), as redesignated by paragraph (8)(B)—

(A) by striking "(L)(i) The Secretary" and inserting "(L) The Secretary"; and

(B) by striking clause (ii).

(b) FUNDING.—Section 16(h) of the Act (7 U.S.C. 2025(h)) is amended by striking "(h)(1)(A) The Secretary" and all that follows through the end of paragraph (1) and inserting the following:

"(h) FUNDING OF EMPLOYMENT AND TRAINING PROGRAMS.—

"(1) IN GENERAL.—

"(A) AMOUNTS.—To carry out employment and training programs, the Secretary shall reserve for allocation to State agencies from funds made available for each fiscal year under section 18(a)(1) the amount of—

"(i) for fiscal year 1996, $77,000,000;

"(ii) for fiscal year 1997, $80,000,000;

"(iii) for fiscal year 1998, $83,000,000;

"(iv) for fiscal year 1999, $86,000,000;

"(v) for fiscal year 2000, $89,000,000;

"(vi) for fiscal year 2001, $92,000,000; and

"(vii) for fiscal year 2002, $95,000,000.

"(B) ALLOCATION.—The Secretary shall allocate the amounts reserved under subparagraph (A) among the State agencies using a reasonable formula (as determined by the Secretary) that gives consideration to the population in each State affected by section 6(o).

"(C) REALLOCATION.—

"(i) NOTIFICATION.—A State agency shall promptly notify the Secretary if the State agency determines that the State agency will not expend all of the funds allocated to the State agency under subparagraph (B).

"(ii) REALLOCATION.—On notification under clause (i), the Secretary shall reallocate the funds that the State agency will not expend as the Secretary considers appropriate and equitable.

"(D) MINIMUM ALLOCATION.—Notwithstanding subparagraphs (A) through (C), the Secretary shall ensure that each State agency operating an employment and training program shall receive not less than $50,000 in each fiscal year.".

(c) ADDITIONAL MATCHING FUNDS.—Section 16(h)(2) of the Act (7 U.S.C. 2025(h)(2)) is amended by inserting before the period at the end the following: ", including the costs for case management and casework to facilitate the transition from economic dependency to self-sufficiency through work".

(d) REPORTS.—Section 16(h) of the Act (7 U.S.C. 2025(h)) is amended—

(1) in paragraph (5)—

(A) by striking "(5)(A) The Secretary" and inserting "(5) The Secretary"; and

(B) by striking subparagraph (B); and

(2) by striking paragraph (6).

SEC. 13028. COMPARABLE TREATMENT FOR DISQUALIFICATION.

(a) IN GENERAL.—Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015) is amended—

(1) by redesignating subsection (i), as added by section 12104, as subsection (p); and

(2) by inserting after subsection (h) the following:

"(i) COMPARABLE TREATMENT FOR DISQUALIFICATION.—

"(1) IN GENERAL.—If a disqualification is imposed on a member of a household for a failure of the member to perform an action required under a Federal, State, or local law relating to a means-tested public assistance program, the State agency may impose the same disqualification on the member of the household under the food stamp program.

"(2) RULES AND PROCEDURES.—If a disqualification is imposed under paragraph (1) for a failure of an individual to perform an action required under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the State agency may use the rules and procedures that apply under part A of title IV of the Act to impose the same disqualification under the food stamp program.

"(3) APPLICATION AFTER DISQUALIFICATION PERIOD.—A member of a household disqualified under paragraph (1) may, after the disqualification period has expired, apply for benefits

under this Act and shall be treated as a new applicant, except that a prior disqualification under subsection (d) shall be considered in determining eligibility.".

(b) STATE PLAN PROVISIONS.—Section 11(e) of the Act (7 U.S.C. 2020(e)) is amended—

(1) in paragraph (24), by striking "and" at the end;

(2) in paragraph (25), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(26) the guidelines the State agency uses in carrying out section 6(i); and".

(c) CONFORMING AMENDMENT.—Section 6(d)(2)(A) of the Act (7 U.S.C. 2015(d)(2)(A)) is amended by striking "that is comparable to a requirement of paragraph (1)".

SEC. 13029. DISQUALIFICATION FOR RECEIPT OF MULTIPLE FOOD STAMP BENEFITS.

Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015), as amended by section 13028, is further amended by inserting after subsection (i) the following:

"(j) DISQUALIFICATION FOR RECEIPT OF MULTIPLE FOOD STAMP BENEFITS.—An individual shall be ineligible to participate in the food stamp program as a member of any household for a 10-year period if the individual is found by a State agency to have made, or is convicted in a Federal or State court of having made, a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple benefits simultaneously under the food stamp program.".

SEC. 13030. DISQUALIFICATION OF FLEEING FELONS.

Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015), as amended by section 13029, is further amended by inserting after subsection (j) the following:

"(k) DISQUALIFICATION OF FLEEING FELONS.—No member of a household who is otherwise eligible to participate in the food stamp program shall be eligible to participate in the program as a member of that or any other household during any period during which the individual is—

"(1) fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the individual is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

"(2) violating a condition of probation or parole imposed under a Federal or State law.".

SEC. 13031. COOPERATION WITH CHILD SUPPORT AGENCIES.

Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015), as amended by section 13030, is further amended by inserting after subsection (k) the following:

"(l) CUSTODIAL PARENT'S COOPERATION WITH CHILD SUPPORT AGENCIES.—

"(1) IN GENERAL.—At the option of a State agency, subject to paragraphs (2) and (3), no natural or adoptive parent or other individual (collectively referred to in this subsection as

'the individual') who is living with and exercising parental control over a child under the age of 18 who has an absent parent shall be eligible to participate in the food stamp program unless the individual cooperates with the State agency administering the program established under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.)—

"(A) in establishing the paternity of the child (if the child is born out of wedlock); and

"(B) in obtaining support for—

"(i) the child; or

"(ii) the individual and the child.

"(2) GOOD CAUSE FOR NONCOOPERATION.—Paragraph (1) shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency in accordance with standards prescribed by the Secretary in consultation with the Secretary of Health and Human Services. The standards shall take into consideration circumstances under which cooperation may be against the best interests of the child.

"(3) FEES.—Paragraph (1) shall not require the payment of a fee or other cost for services provided under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.).

"(m) NON-CUSTODIAL PARENT'S COOPERATION WITH CHILD SUPPORT AGENCIES.—

"(1) IN GENERAL.—At the option of a State agency, subject to paragraphs (2) and (3), a putative or identified non-custodial parent of a child under the age of 18 (referred to in this subsection as 'the individual') shall not be eligible to participate in the food stamp program if the individual refuses to cooperate with the State agency administering the program established under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.)—

"(A) in establishing the paternity of the child (if the child is born out of wedlock); and

"(B) in providing support for the child.

"(2) REFUSAL TO COOPERATE.—

"(A) GUIDELINES.—The Secretary, in consultation with the Secretary of Health and Human Services, shall develop guidelines on what constitutes a refusal to cooperate under paragraph (1).

"(B) PROCEDURES.—The State agency shall develop procedures, using guidelines developed under subparagraph (A), for determining whether an individual is refusing to cooperate under paragraph (1).

"(3) FEES.—Paragraph (1) shall not require the payment of a fee or other cost for services provided under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.).

"(4) PRIVACY.—The State agency shall provide safeguards to restrict the use of information collected by a State agency administering the program established under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.) to purposes for which the information is collected.".

SEC. 13032. DISQUALIFICATION RELATING TO CHILD SUPPORT ARREARS.

Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015), as amended by section 13031, is further amended by inserting after subsection (m) the following:

"(n) DISQUALIFICATION FOR CHILD SUPPORT ARREARS.—

"(1) IN GENERAL.—No individual shall be eligible to participate in the food stamp program as a member of any household during any month that the individual is delinquent in any payment due under a court order for the support of a child of the individual.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply if—

"(A) a court is allowing the individual to delay payment; or

"(B) the individual is complying with a payment plan approved by a court or the State agency designated under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.) to provide support for the child of the individual.".

SEC. 13033. WORK REQUIREMENT.

(a) IN GENERAL.—Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015), as amended by section 13032, is further amended by inserting after subsection (n) the following:

"(o) WORK REQUIREMENT.—

"(1) DEFINITION OF WORK PROGRAM.—In this subsection, the term 'work program' means—

"(A) a program under the Job Training Partnership Act (29 U.S.C. 1501 et seq.);

"(B) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

"(C) a program of employment or training operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under section 6(d)(4), other than a job search program or a job search training program.

"(2) WORK REQUIREMENT.—Subject to the other provisions of this subsection, no individual shall be eligible to participate in the food stamp program as a member of any household if, during the preceding 12-month period, the individual received food stamp benefits for not less than 4 months during which the individual did not—

"(A) work 20 hours or more per week, averaged monthly; or

"(B) participate in and comply with the requirements of a work program for 20 hours or more per week, as determined by the State agency; or

"(C) participate in a program under section 20 or a comparable program established by a State or political subdivision of a State.

"(3) EXCEPTION.—Paragraph (2) shall not apply to an individual if the individual is—

"(A) under 18 or over 50 years of age;

"(B) medically certified as physically or mentally unfit for employment;

“(C) a parent or other member of a household with responsibility for a dependent child;

“(D) otherwise exempt under section 6(d)(2); or

“(E) a pregnant woman.

“(4) WAIVER.—

“(A) IN GENERAL.—On the request of a State agency, the Secretary may waive the applicability of paragraph (2) to any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside—

“(i) has an unemployment rate of over 10 percent; or

“(ii) does not have a sufficient number of jobs to provide employment for the individuals.

“(B) REPORT.—The Secretary shall report the basis for a waiver under subparagraph (A) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

“(5) SUBSEQUENT ELIGIBILITY.—

“(A) IN GENERAL.—Paragraph (2) shall cease to apply to an individual if, during a 30-day period, the individual—

“(i) works 80 or more hours;

“(ii) participates in and complies with the requirements of a work program for 80 or more hours, as determined by a State agency; or

“(iii) participates in a program under section 20 or a comparable program established by a State or political subdivision of a State.

“(B) LIMITATION.—During the subsequent 12-month period, the individual shall be eligible to participate in the food stamp program for not more than 4 months during which the individual does not—

“(i) work 20 hours or more per week, averaged monthly;

“(ii) participate in and comply with the requirements of a work program for 20 hours or more per week, as determined by the State agency; or

“(iii) participate in a program under section 20 or a comparable program established by a State or political subdivision of a State.”.

(b) TRANSITION PROVISION.—Prior to 1 year after the date of enactment of this Act, the term “preceding 12-month period” in section 6(o) of the Food Stamp Act of 1977, as amended by subsection (a), means the preceding period that begins on the date of enactment of this Act.

SEC. 13034. ENCOURAGE ELECTRONIC BENEFIT TRANSFER SYSTEMS.

Section 7(i) of the Food Stamp Act of 1977 (7 U.S.C. 2016(i)) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) ELECTRONIC BENEFIT TRANSFERS.—

“(A) IMPLEMENTATION.—Each State agency shall implement an electronic benefit transfer system in which household benefits determined under section 8(a) or 24 are

issued from and stored in a central databank before October 1, 2002, unless the Secretary provides a waiver for a State agency that faces unusual barriers to implementing an electronic benefit transfer system.

"(B) TIMELY IMPLEMENTATION.—State agencies are encouraged to implement an electronic benefit transfer system under subparagraph (A) as soon as practicable.

"(C) STATE FLEXIBILITY.—Subject to paragraph (2), a State agency may procure and implement an electronic benefit transfer system under the terms, conditions, and design that the State agency considers appropriate.

"(D) OPERATION.—An electronic benefit transfer system should take into account generally accepted standard operating rules based on—

"(i) commercial electronic funds transfer technology;

"(ii) the need to permit interstate operation and law enforcement monitoring; and

"(iii) the need to permit monitoring and investigations by authorized law enforcement agencies.";

(2) in paragraph (2)—

(A) by striking "effective no later than April 1, 1992,";

(B) in subparagraph (A)—

(i) by striking ", in any 1 year,"; and

(ii) by striking "on-line";

(C) by striking subparagraph (D) and inserting the following:

"(D)(i) measures to maximize the security of a system using the most recent technology available that the State agency considers appropriate and cost effective and which may include personal identification numbers, photographic identification on electronic benefit transfer cards, and other measures to protect against fraud and abuse; and

"(ii) effective not later than 2 years after the effective date of this clause, to the extent practicable, measures that permit a system to differentiate items of food that may be acquired with an allotment from items of food that may not be acquired with an allotment.";

(D) in subparagraph (G), by striking "and" at the end;

(E) in subparagraph (H), by striking the period at the end and inserting "; and"; and

(F) by adding at the end the following:

"(I) procurement standards."; and

(3) by adding at the end the following:

"(7) REPLACEMENT OF BENEFITS.—Regulations issued by the Secretary regarding the replacement of benefits and liability for replacement of benefits under an electronic benefit transfer system shall be similar to the regulations in effect for a paper food stamp issuance system.

"(8) REPLACEMENT CARD FEE.—A State agency may collect a charge for replacement of an electronic benefit transfer card by reducing the monthly allotment of the household receiving the replacement card.

"(9) OPTIONAL PHOTOGRAPHIC IDENTIFICATION.—

"(A) IN GENERAL.—A State agency may require that an electronic benefit card contain a photograph of 1 or more members of a household.

"(B) OTHER AUTHORIZED USERS.—If a State agency requires a photograph on an electronic benefit card under subparagraph (A), the State agency shall establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may utilize the card.".

SEC. 13035. VALUE OF MINIMUM ALLOTMENT.

The proviso in section 8(a) of the Food Stamp Act of 1977 (7 U.S.C. 2017(a)) is amended by striking ", and shall be adjusted" and all that follows through "$5".

SEC. 13036. BENEFITS ON RECERTIFICATION.

Section 8(c)(2)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2017(c)(2)(B)) is amended by striking "of more than one month".

SEC. 13037. OPTIONAL COMBINED ALLOTMENT FOR EXPEDITED HOUSEHOLDS.

Section 8(c) of the Food Stamp Act of 1977 (7 U.S.C. 2017(c)) is amended by striking paragraph (3) and inserting the following:

"(3) OPTIONAL COMBINED ALLOTMENT FOR EXPEDITED HOUSEHOLDS.—A State agency may provide to an eligible household applying after the 15th day of a month, in lieu of the initial allotment of the household and the regular allotment of the household for the following month, an allotment that is equal to the total amount of the initial allotment and the first regular allotment. The allotment shall be provided in accordance with section 11(e)(3) in the case of a household that is not entitled to expedited service and in accordance with paragraphs (3) and (9) of section 11(e) in the case of a household that is entitled to expedited service.".

SEC. 13038. FAILURE TO COMPLY WITH OTHER MEANS-TESTED PUBLIC ASSISTANCE PROGRAMS.

Section 8 of the Food Stamp Act of 1977 (7 U.S.C. 2017) is amended by striking subsection (d) and inserting the following:

"(d) REDUCTION OF PUBLIC ASSISTANCE BENEFITS.—

"(1) IN GENERAL.—If the benefits of a household are reduced under a Federal, State, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of the reduction—

"(A) the household may not receive an increased allotment as the result of a decrease in the income of the household to the extent that the decrease is the result of the reduction; and

"(B) the State agency may reduce the allotment of the household by not more than 25 percent.

"(2) RULES AND PROCEDURES.—If the allotment of a household is reduced under this subsection for a failure to perform an action required under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the State agency may use the rules and procedures that apply under part A of title IV of the Act to reduce the allotment under the food stamp program.".

SEC. 13039. ALLOTMENTS FOR HOUSEHOLDS RESIDING IN CENTERS.

Section 8 of the Food Stamp Act of 1977 (7 U.S.C. 2017) is amended by adding at the end the following:

"(f) ALLOTMENTS FOR HOUSEHOLDS RESIDING IN CENTERS.—

"(1) IN GENERAL.—In the case of an individual who resides in a center for the purpose of a drug or alcoholic treatment program described in the last sentence of section 3(i), a State agency may provide an allotment for the individual to—

"(A) the center as an authorized representative of the individual for a period that is less than 1 month; and

"(B) the individual, if the individual leaves the center.

"(2) DIRECT PAYMENT.—A State agency may require an individual referred to in paragraph (1) to designate the center in which the individual resides as the authorized representative of the individual for the purpose of receiving an allotment.".

SEC. 13040. CONDITION PRECEDENT FOR APPROVAL OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS.

Section 9(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2018(a)(1)) is amended by adding at the end the following: "No retail food store or wholesale food concern of a type determined by the Secretary, based on factors that include size, location, and type of items sold, shall be approved to be authorized or reauthorized for participation in the food stamp program unless an authorized employee of the Department of Agriculture, a designee of the Secretary, or, if practicable, an official of the State or local government designated by the Secretary has visited the store or concern for the purpose of determining whether the store or concern should be approved or reauthorized, as appropriate.".

SEC. 13041. AUTHORITY TO ESTABLISH AUTHORIZATION PERIODS.

Section 9(a) of the Food Stamp Act of 1977 (7 U.S.C. 2018(a)) is amended by adding at the end the following:

"(3) AUTHORIZATION PERIODS.—The Secretary shall establish specific time periods during which authorization to accept and redeem coupons, or to redeem benefits through an electronic benefit transfer system, shall be valid under the food stamp program.".

SEC. 13042. INFORMATION FOR VERIFYING ELIGIBILITY FOR AUTHORIZATION.

Section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) is amended—

(1) in the first sentence, by inserting ", which may include relevant income and sales tax filing documents," after "submit information"; and

(2) by inserting after the first sentence the following: "The regulations may require retail food stores and wholesale food concerns to provide written authorization for the Secretary to verify all relevant tax filings with appropriate agencies and to obtain corroborating documentation from other sources so that the accuracy of information provided by the stores and concerns may be verified.".

SEC. 13043. WAITING PERIOD FOR STORES THAT FAIL TO MEET AUTHORIZATION CRITERIA.

Section 9(d) of the Food Stamp Act of 1977 (7 U.S.C. 2018(d)) is amended by adding at the end the following: "A retail food store or wholesale food concern that is denied approval to accept and redeem coupons because the store or concern does not meet criteria for approval established by the Secretary may not, for at least 6 months, submit a new application to participate in the program. The Secretary may establish a longer time period under the preceding sentence, including permanent disqualification, that reflects the severity of the basis of the denial.".

SEC. 13044. EXPEDITED COUPON SERVICE.

Section 11(e)(9) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)(9)) is amended—

(1) in subparagraph (A)—

(A) by striking "five days" and inserting "7 days"; and

(B) by inserting "and" at the end;

(2) by striking subparagraphs (B) and (C);

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

(4) in subparagraph (B), as redesignated by paragraph (3), by striking ", (B), or (C)".

SEC. 13045. WITHDRAWING FAIR HEARING REQUESTS.

Section 11(e)(10) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)(10)) is amended by inserting before the semicolon at the end a period and the following: "At the option of a State, at any time prior to a fair hearing determination under this paragraph, a household may withdraw, orally or in writing, a request by the household for the fair hearing. If the withdrawal request is an oral request, the State agency shall provide a written notice to the household confirming the withdrawal request and providing the household with an opportunity to request a hearing".

SEC. 13046. DISQUALIFICATION OF RETAILERS WHO INTENTIONALLY SUBMIT FALSIFIED APPLICATIONS.

Section 12(b) of the Food Stamp Act of 1977 (7 U.S.C. 2021(b)) is amended—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(4) for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application for the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was a part of the application.".

SEC. 13047. DISQUALIFICATION OF RETAILERS WHO ARE DISQUALIFIED UNDER THE WIC PROGRAM.

Section 12 of the Food Stamp Act of 1977 (7 U.S.C. 2021) is amended by adding at the end the following:

"(g) DISQUALIFICATION OF RETAILERS WHO ARE DISQUALIFIED UNDER THE WIC PROGRAM.—

"(1) In general.—The Secretary shall issue regulations providing criteria for the disqualification under this Act of an approved retail food store and a wholesale food concern that is disqualified from accepting benefits under the special supplemental nutrition program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966 (7 U.S.C. 1786).

"(2) Terms.—A disqualification under paragraph (1)—

"(A) shall be for the same length of time as the disqualification from the program referred to in paragraph (1);

"(B) may begin at a later date than the disqualification from the program referred to in paragraph (1); and

"(C) notwithstanding section 14, shall not be subject to judicial or administrative review.".

SEC. 13048. COLLECTION OF OVERISSUANCES.

(a) Collection of Overissuances.—Section 13 of the Food Stamp Act of 1977 (7 U.S.C. 2022) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) Collection of Overissuances.—

"(1) In general.—Except as otherwise provided in this subsection, a State agency shall collect any overissuance of coupons issued to a household by—

"(A) reducing the allotment of the household;

"(B) withholding amounts from unemployment compensation from a member of the household under subsection (c);

"(C) recovering from Federal pay or a Federal income tax refund under subsection (d); or

"(D) any other means.

"(2) Cost effectiveness.—Paragraph (1) shall not apply if the State agency demonstrates to the satisfaction of the Secretary that all of the means referred to in paragraph (1) are not cost effective.

"(3) Maximum reduction absent fraud.—If a household received an overissuance of coupons without any member of the household being found eligible to participate in the program under section 6(b)(1) and a State agency elects to reduce the allotment of the household under paragraph (1)(A), the State agency shall not reduce the monthly allotment of the household under paragraph (1)(A) by an amount in excess of the greater of—

"(A) 10 percent of the monthly allotment of the household; or

"(B) $10.

"(4) Procedures.—A State agency shall collect an overissuance of coupons issued to a household under paragraph (1) in accordance with the requirements established by the State agency for providing notice, electing a means of payment, and establishing a time schedule for payment."; and

(2) in subsection (d)—

(A) by striking "as determined under subsection (b) and except for claims arising from an error of the State agency,"

and inserting ", as determined under subsection (b)(1),"; and

(B) by inserting before the period at the end the following: "or a Federal income tax refund as authorized by section 3720A of title 31, United States Code".

(b) CONFORMING AMENDMENTS.—Section 11(e)(8) of the Act (7 U.S.C. 2020(e)(8)) is amended—

(1) by striking "and excluding claims" and all that follows through "such section"; and

(2) by inserting before the semicolon at the end the following: "or a Federal income tax refund as authorized by section 3720A of title 31, United States Code".

(c) RETENTION RATE.—Section 16(a) of the Act (7 U.S.C. 2025(a)) is amended by striking "25 percent during the period beginning October 1, 1990" and all that follows through "error of a State agency" and inserting the following: "25 percent of the overissuances collected by the State agency under section 13, except those overissuances arising from an error of the State agency".

SEC. 13049. AUTHORITY TO SUSPEND STORES VIOLATING PROGRAM REQUIREMENTS PENDING ADMINISTRATIVE AND JUDICIAL REVIEW.

Section 14(a) of the Food Stamp Act of 1977 (7 U.S.C. 2023(a)) is amended—

(1) by redesignating the first through seventeenth sentences as paragraphs (1) through (17), respectively; and

(2) by adding at the end the following:

"(18) SUSPENSION OF STORES PENDING REVIEW.—Notwithstanding any other provision of this subsection, any permanent disqualification of a retail food store or wholesale food concern under paragraph (3) or (4) of section 12(b) shall be effective from the date of receipt of the notice of disqualification. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.".

SEC. 13050. LIMITATION OF FEDERAL MATCH.

Section 16(a)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2025(a)(4)) is amended by inserting after the comma at the end the following: "but not including recruitment activities,".

SEC. 13051. WORK SUPPLEMENTATION OR SUPPORT PROGRAM.

Section 16 of the Food Stamp Act of 1977 (7 U.S.C. 2025) is amended by adding at the end the following:

"(c) WORK SUPPLEMENTATION OR SUPPORT PROGRAM.—

"(1) DEFINITION OF WORK SUPPLEMENTATION OR SUPPORT PROGRAM.—In this subsection, the term 'work supplementation or support program' means a program under which, as determined by the Secretary, public assistance (including any benefits provided under a program established by the State and the food stamp program) is provided to an employer to be used for hiring and employing a public assistance recipient who was not employed by the employer at the time the public assistance recipient entered the program.

"(2) PROGRAM.—A State agency may elect to use an amount equal to the allotment that would otherwise be issued to a

household under the food stamp program, but for the operation of this subsection, for the purpose of subsidizing or supporting a job under a work supplementation or support program established by the State.

“(3) PROCEDURE.—If a State agency makes an election under paragraph (2) and identifies each household that participates in the food stamp program that contains an individual who is participating in the work supplementation or support program—

“(A) the Secretary shall pay to the State agency an amount equal to the value of the allotment that the household would be eligible to receive but for the operation of this subsection;

“(B) the State agency shall expend the amount received under subparagraph (A) in accordance with the work supplementation or support program in lieu of providing the allotment that the household would receive but for the operation of this subsection;

“(C) for purposes of—

“(i) sections 5 and 8(a), the amount received under this subsection shall be excluded from household income and resources; and

“(ii) section 8(b), the amount received under this subsection shall be considered to be the value of an allotment provided to the household; and

“(D) the household shall not receive an allotment from the State agency for the period during which the member continues to participate in the work supplementation or support program.

“(4) OTHER WORK REQUIREMENTS.—No individual shall be excused, by reason of the fact that a State has a work supplementation or support program, from any work requirement under section 6(d), except during the periods in which the individual is employed under the work supplementation or support program.

“(5) LENGTH OF PARTICIPATION.—A State agency shall provide a description of how the public assistance recipients in the program shall, within a specific period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

“(6) DISPLACEMENT.—A work supplementation or support program shall not displace the employment of individuals who are not supplemented or supported.”.

SEC. 13052. AUTHORIZATION OF PILOT PROJECTS.

The last sentence of section 17(b)(1)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2026(b)(1)(A)) is amended by striking “1995” and inserting “2002”.

SEC. 13053. EMPLOYMENT INITIATIVES PROGRAM.

Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) is amended by striking subsection (d) and inserting the following:

“(d) EMPLOYMENT INITIATIVES PROGRAM.—

“(1) ELECTION TO PARTICIPATE.—

"(A) IN GENERAL.—Subject to the other provisions of this subsection, a State may elect to carry out an employment initiatives program under this subsection.

"(B) REQUIREMENT.—A State shall be eligible to carry out an employment initiatives program under this subsection only if not less than 50 percent of the households that received food stamp benefits during the summer of 1993 also received benefits under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) during the summer of 1993.

"(2) PROCEDURE.—

"(A) IN GENERAL.—A State that has elected to carry out an employment initiatives program under paragraph (1) may use amounts equal to the food stamp allotments that would otherwise be issued to a household under the food stamp program, but for the operation of this subsection, to provide cash benefits in lieu of the food stamp allotments to the household if the household is eligible under paragraph (3).

"(B) PAYMENT.—The Secretary shall pay to each State that has elected to carry out an employment initiatives program under paragraph (1) an amount equal to the value of the allotment that each household would be eligible to receive under this Act but for the operation of this subsection.

"(C) OTHER PROVISIONS.—For purposes of the food stamp program (other than this subsection)—

"(i) cash assistance under this subsection shall be considered to be an allotment; and

"(ii) each household receiving cash benefits under this subsection shall not receive any other food stamp benefit for the period for which the cash assistance is provided.

"(D) ADDITIONAL PAYMENTS.—Each State that has elected to carry out an employment initiatives program under paragraph (1) shall—

"(i) increase the cash benefits provided to each household under this subsection to compensate for any State or local sales tax that may be collected on purchases of food by any household receiving cash benefits under this subsection, unless the Secretary determines on the basis of information provided by the State that the increase is unnecessary on the basis of the limited nature of the items subject to the State or local sales tax; and

"(ii) pay the cost of any increase in cash benefits required by clause (i).

"(3) ELIGIBILITY.—A household shall be eligible to receive cash benefits under paragraph (2) if an adult member of the household—

"(A) has worked in unsubsidized employment for not less than the preceding 90 days;

"(B) has earned not less than $350 per month from the employment referred to in subparagraph (A) for not less than the preceding 90 days;

"(C)(i) is receiving benefits under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

"(ii) was receiving benefits under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) at the time the member first received cash benefits under this subsection and is no longer eligible for the State program because of earned income;

"(D) is continuing to earn not less than $350 per month from the employment referred to in subparagraph (A); and

"(E) elects to receive cash benefits in lieu of food stamp benefits under this subsection.

"(4) EVALUATION.—A State that operates a program under this subsection for 2 years shall provide to the Secretary a written evaluation of the impact of cash assistance under this subsection. The State agency, with the concurrence of the Secretary, shall determine the content of the evaluation.".

SEC. 13054. REAUTHORIZATION OF PUERTO RICO NUTRITION ASSISTANCE PROGRAM.

The first sentence of section 19(a)(1)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2028(a)(1)(A)) is amended by striking "$974,000,000" and all that follows through "fiscal year 1995" and inserting "$1,143,000,000 for each of fiscal years 1995 and 1996, $1,182,000,000 for fiscal year 1997, $1,223,000,000 for fiscal year 1998, $1,266,000,000 for fiscal year 1999, $1,310,000,000 for fiscal year 2000, $1,357,000,000 for fiscal year 2001, and $1,404,000,000 for fiscal year 2002".

SEC. 13055. SIMPLIFIED FOOD STAMP PROGRAM.

(a) IN GENERAL.—The Act (7 U.S.C. 2011 et seq.) is amended by adding at the end the following:

"SEC. 24. SIMPLIFIED FOOD STAMP PROGRAM.

"(a) DEFINITION OF FEDERAL COSTS.—In this section, the term 'Federal costs' does not include any Federal costs incurred under section 17.

"(b) ELECTION.—Subject to subsection (d), a State agency may elect to carry out a Simplified Food Stamp Program (referred to in this section as a 'Program') in accordance with this section.

"(c) OPERATION OF PROGRAM.—If a State agency elects to carry out a Program, within the State or a political subdivision of the State—

"(1) a household in which all members receive assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) shall automatically be eligible to participate in the Program; and

"(2) subject to subsection (f), benefits under the Program shall be determined under rules and procedures established by the State under—

"(A) a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

"(B) the food stamp program (other than section 25); or

"(C) a combination of a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) and the food stamp program (other than section 25).

"(d) APPROVAL OF PROGRAM.—

"(1) STATE PLAN.—A State agency may not operate a Program unless the Secretary approves a State plan for the operation of the Program under paragraph (2).

"(2) APPROVAL OF PLAN.—The Secretary shall approve any State plan to carry out a Program if the Secretary determines that the plan—

"(A) complies with this section; and

"(B) contains sufficient documentation that the plan will not increase Federal costs for any fiscal year.

"(e) INCREASED FEDERAL COSTS.—

"(1) DETERMINATION.—During each fiscal year and not later than 90 days after the end of each fiscal year, the Secretary shall determine whether a Program being carried out by a State agency is increasing Federal costs under this Act above the Federal costs incurred under the food stamp program in operation in the State or political subdivision of the State for the fiscal year prior to the implementation of the Program, adjusted for any changes in—

"(A) participation;

"(B) the income of participants in the food stamp program that is not attributable to public assistance; and

"(C) the thrifty food plan under section 3(o).

"(2) NOTIFICATION.—If the Secretary determines that the Program has increased Federal costs under this Act for any fiscal year or any portion of any fiscal year, the Secretary shall notify the State agency not later than 30 days after the Secretary makes the determination under paragraph (1).

"(3) ENFORCEMENT.—

"(A) CORRECTIVE ACTION.—Not later than 90 days after the date of a notification under paragraph (2), the State agency shall submit a plan for approval by the Secretary for prompt corrective action that is designed to prevent the Program from increasing Federal costs under this Act.

"(B) TERMINATION.—If the State agency does not submit a plan under subparagraph (A) or carry out a plan approved by the Secretary, the Secretary shall terminate the approval of the State agency to operate a Program and the State agency shall be ineligible to operate a future Program.

"(f) RULES AND PROCEDURES.—

"(1) IN GENERAL.—In operating a Program, a State or political subdivision of a State may follow the rules and procedures established by the State or political subdivision under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or under the food stamp program.

"(2) STANDARDIZED DEDUCTIONS.—In operating a Program, a State may standardize the deductions provided under section 5(e). In developing the standardized deduction, the State shall consider the work expenses, dependent care costs, and shelter costs of participating households.

"(3) REQUIREMENTS.—In operating a Program, a State or political subdivision shall comply with the requirements of—

"(A) subsections (a) through (g) of section 7;

"(B) section 8(a) (except that the income of a household may be determined under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.));

"(C) subsection (b) and (d) of section 8;

"(D) subsections (a), (c), (d), and (n) of section 11;

"(E) paragraphs (8), (12), (17), (19), (21), (26), and (27) of section 11(e);

"(F) section 11(e)(10) (or a comparable requirement established by the State under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

"(G) section 16.

"(4) LIMITATION ON ELIGIBILITY.—Notwithstanding any other provision of this section, a household may not receive benefits under this section as a result of the eligibility of the household under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), unless the Secretary determines that any household with income above 130 percent of the poverty guidelines is not eligible for the program.".

(b) STATE PLAN PROVISIONS.—Section 11(e) of the Act (7 U.S.C. 2020(e)), as amended by sections 13028(b), is further amended by adding at the end the following:

"(27) if a State agency elects to carry out a Simplified Food Stamp Program under section 24, the plans of the State agency for operating the program, including—

"(A) the rules and procedures to be followed by the State to determine food stamp benefits;

"(B) how the State will address the needs of households that experience high shelter costs in relation to the incomes of the households; and

"(C) a description of the method by which the State will carry out a quality control system under section 16(c).".

(c) CONFORMING AMENDMENTS.—

(1) Section 8 of the Act (7 U.S.C. 2017), as amended by section 13039, is further amended—

(A) by striking subsection (e); and

(B) by redesignating subsection (f) as subsection (e).

(2) Section 17 of the Act (7 U.S.C. 2026) is amended—

(A) by striking subsection (i); and

(B) by redesignating subsections (j) through (l) as subsections (i) through (k), respectively.

SEC. 13056. STATE FOOD ASSISTANCE BLOCK GRANT.

(a) IN GENERAL.—The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), as amended by section 13055, is further amended by adding at the end the following:

"SEC. 25. STATE FOOD ASSISTANCE BLOCK GRANT.

"(a) DEFINITIONS.—In this section:

"(1) FOOD ASSISTANCE.—The term 'food assistance' means assistance that may be used only to obtain food, as defined in section 3(g).

“(2) STATE.—The term ‘State’ means each of the 50 States, the District of Columbia, Guam, and the Virgin Islands of the United States.

“(b) ESTABLISHMENT.—The Secretary shall establish a program to make grants to States in accordance with this section to provide—

“(1) food assistance to needy individuals and families residing in the State; and

“(2) funds for administrative costs incurred in providing the assistance.

“(c) ELECTION.—

“(1) IN GENERAL.—A State may annually elect to participate in the program established under subsection (b) if the State—

“(A) has fully implemented an electronic benefit transfer system that operates in the entire State;

“(B) has a payment error rate under section 16(c) that is not more than 6 percent as announced most recently by the Secretary; or

“(C) has a payment error rate in excess of 6 percent and agrees to contribute non-Federal funds for the fiscal year of the grant, for benefits and administration of the State’s food assistance program, the amount determined under paragraph (2).

“(2) STATE MANDATORY CONTRIBUTIONS.—

“(A) IN GENERAL.—In the case of a State that elects to participate in the program under paragraph (1)(C), the State shall agree to contribute, for a fiscal year, an amount equal to—

“(A)(i) the benefits issued in the State; multiplied by

“(ii) the payment error rate of the State; minus

“(B)(i) the benefits issued in the State; multiplied by

“(ii) 6 percent.

“(B) DETERMINATION.—Notwithstanding sections 13 and 14, the calculation of the contribution shall be based solely on the determination of the Secretary of the payment error rate.

“(C) DATA.—For purposes of implementing subparagraph (A) for a fiscal year, the Secretary shall use the data for the most recent fiscal year available.

“(3) ELECTION LIMITATION.—

“(A) RE-ENTERING FOOD STAMP PROGRAM.—A State that elects to participate in the program under paragraph (1) may in a subsequent year decline to elect to participate in the program and instead participate in the food stamp program in accordance with the other sections of this Act.

“(B) LIMITATION.—Subsequent to re-entering the food stamp program under subparagraph (A), the State shall only be eligible to participate in the food stamp program in accordance with the other sections of this Act and shall not be eligible to elect to participate in the program established under subsection (b).

“(4) PROGRAM EXCLUSIVE.—

“(A) IN GENERAL.—A State that is participating in the program established under subsection (b) shall not be sub-

ject to, or receive any benefit under, this Act except as provided in this section.

"(B) CONTRACT WITH FEDERAL GOVERNMENT.—Nothing in this section shall prohibit a State from contracting with the Federal Government for the provision of services or materials necessary to carry out a program under this section.

"(d) LEAD AGENCY.—A State desiring to receive a grant under this section shall designate, in an application submitted to the Secretary under subsection (e)(1), an appropriate State agency responsible for the administration of the program under this section as the lead agency.

"(e) APPLICATION AND PLAN.—

"(1) APPLICATION.—To be eligible to receive assistance under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by regulation require, including—

"(A) an assurance that the State will comply with the requirements of this section;

"(B) a State plan that meets the requirements of paragraph (3); and

"(C) an assurance that the State will comply with the requirements of the State plan under paragraph (3).

"(2) ANNUAL PLAN.—The State plan contained in the application under paragraph (1) shall be submitted for approval annually.

"(3) REQUIREMENTS OF PLAN.—

"(A) LEAD AGENCY.—The State plan shall identify the lead agency.

"(B) USE OF BLOCK GRANT FUNDS.—The State plan shall provide that the State shall use the amounts provided to the State for each fiscal year under this section—

"(i) to provide food assistance to needy individuals and families residing in the State, other than residents of institutions who are ineligible for food stamps under section 3(i); and

"(ii) to pay administrative costs incurred in providing the assistance.

"(C) GROUPS SERVED.—The State plan shall describe how and to what extent the program will serve specific groups of individuals and families and how the treatment will differ from treatment under the food stamp program under the other sections of this Act of the individuals and families, including—

"(i) elderly individuals and families;

"(ii) migrants or seasonal farmworkers;

"(iii) homeless individuals and families;

"(iv) individuals and families who live in institutions eligible under section 3(i);

"(v) individuals and families with earnings; and

"(vi) members of Indian tribes or tribal organizations.

"(D) ASSISTANCE FOR ENTIRE STATE.—The State plan shall provide that benefits under this section shall be available throughout the entire State.

"(E) NOTICE AND HEARINGS.—The State plan shall provide that an individual or family who applies for, or receives, assistance under this section shall be provided with notice of, and an opportunity for a hearing on, any action under this section that adversely affects the individual or family.

"(F) ASSESSMENT OF NEEDS.—The State plan shall assess the food and nutrition needs of needy persons residing in the State.

"(G) ELIGIBILITY STANDARDS.—The State plan shall describe the income, resource, and other eligibility standards that are established for the receipt of assistance under this section.

"(H) RECEIVING BENEFITS IN MORE THAN 1 JURISDICTION.—The State plan shall establish a system for the exchange of information with other States to verify the identity and receipt of benefits by recipients.

"(I) PRIVACY.—The State plan shall provide for safeguarding and restricting the use and disclosure of information about any individual or family receiving assistance under this section.

"(J) OTHER INFORMATION.—The State plan shall contain such other information as may be required by the Secretary.

"(4) APPROVAL OF APPLICATION AND PLAN.—The Secretary shall approve an application and State plan that satisfies the requirements of this section.

"(f) NO INDIVIDUAL OR FAMILY ENTITLEMENT TO ASSISTANCE.—Nothing in this section—

"(1) entitles any individual or family to assistance under this section; or

"(2) limits the right of a State to impose additional limitations or conditions on assistance under this section.

"(g) BENEFITS FOR ALIENS.—

"(1) ELIGIBILITY.—No individual who is an alien shall be eligible to receive benefits under a State plan approved under subsection (e)(4) if the individual is not eligible to participate in the food stamp program due to the alien status of the individual.

"(2) INCOME.—The State plan shall provide that the income of an alien shall be determined in accordance with section 5(i).

"(h) EMPLOYMENT AND TRAINING.—

"(1) WORK REQUIREMENTS.—No individual or household shall be eligible to receive benefits under a State plan funded under this section if the individual or household is not eligible to participate in the food stamp program under subsection (d) or (o) of section 6.

"(2) WORK PROGRAMS.—Each State shall implement an employment and training program in accordance with the terms and conditions of section 6(d)(4) for individuals under the pro-

gram and shall be eligible to receive funding under section 16(h).

"(i) ENFORCEMENT.—

"(1) REVIEW OF COMPLIANCE WITH STATE PLAN.—The Secretary shall review and monitor State compliance with this section and the State plan approved under subsection (e)(4).

"(2) NONCOMPLIANCE.—

"(A) IN GENERAL.—If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

"(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the State plan approved under subsection (e)(4); or

"(ii) in the operation of any program or activity for which assistance is provided under this section, there is a failure by the State to comply substantially with any provision of this section;

the Secretary shall notify the State of the finding and that no further grants will be made to the State under this section (or, in the case of noncompliance in the operation of a program or activity, that no further grants to the State will be made with respect to the program or activity) until the Secretary is satisfied that there is no longer any failure to comply or that the noncompliance will be promptly corrected.

"(B) OTHER PENALTIES.—In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to, or in lieu of, imposing the penalties described in subparagraph (A), impose other appropriate penalties, including recoupment of money improperly expended for purposes prohibited or not authorized by this section and disqualification from the receipt of financial assistance under this section.

"(C) NOTICE.—The notice required under subparagraph (A) shall include a specific identification of any additional penalty being imposed under subparagraph (B).

"(3) ISSUANCE OF REGULATIONS.—The Secretary shall establish by regulation procedures for—

"(A) receiving, processing, and determining the validity of complaints made to the Secretary concerning any failure of a State to comply with the State plan or any requirement of this section; and

"(B) imposing penalties under this section.

"(j) GRANT.—

"(1) IN GENERAL.—For each fiscal year, the Secretary shall pay to a State that has an application approved by the Secretary under subsection (e)(4) an amount that is equal to the grant of the State under subsection (m) for the fiscal year, adjusted for any reduction required under subsection (m)(2).

"(2) METHOD OF GRANT.—The Secretary shall make a grant to a State for a fiscal year under this section by issuing 1 or more letters of credit for the fiscal year, with necessary adjustments on account of overpayments or underpayments, as determined by the Secretary.

"(3) SPENDING OF GRANTS BY STATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a grant to a State determined under subsection (m)(1) for a fiscal year may be expended by the State only in the fiscal year.

"(B) CARRYOVER.—The State may reserve up to 10 percent of a grant determined under subsection (m)(1) for a fiscal year to provide assistance under this section in subsequent fiscal years, except that the reserved funds may not exceed 30 percent of the total grant received under this section for a fiscal year.

"(4) FOOD ASSISTANCE AND ADMINISTRATIVE EXPENDITURES.—In each fiscal year, not more than 6 percent of the Federal and State funds required to be expended by a State under this section shall be used for administrative expenses.

"(5) PROVISION OF FOOD ASSISTANCE.—A State may provide food assistance under this section in any manner determined appropriate by the State, such as electronic benefit transfer limited to food purchases, coupons limited to food purchases, or direct provision of commodities.

"(k) QUALITY CONTROL.—Each State participating in the program established under this section shall maintain a system in accordance with, and shall be subject to section 16(c), including sanctions and eligibility for incentive payment under section 16(c).

"(l) NONDISCRIMINATION.—

"(1) IN GENERAL.—The Secretary shall not provide financial assistance for any program, project, or activity under this section if any person with responsibilities for the operation of the program, project, or activity discriminates with respect to the program, project, or activity because of race, religion, color, national origin, sex, or disability.

"(2) ENFORCEMENT.—The powers, remedies, and procedures set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) may be used by the Secretary to enforce paragraph (1).

"(m) GRANT CALCULATION.—

"(1) STATE GRANT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), from the amounts made available under section 18 for each fiscal year, the Secretary shall provide a grant to each State participating in the program established under this section an amount that is equal to the sum of—

"(i) the greater of, as determined by the Secretary—

"(I) the total dollar value of all benefits issued under the food stamp program established under this Act by the State during fiscal year 1994; or

"(II) the average per fiscal year of the total dollar value of all benefits issued under the food stamp program by the State during each of fiscal years 1992 through 1994; and

"(ii) the greater of, as determined by the Secretary—

"(I) the total amount received by the State for administrative costs under section 16 for fiscal year 1994; or

"(II) the average per fiscal year of the total amount received by the State for administrative costs under section 16 for each of fiscal years 1992 through 1994.

"(B) INSUFFICIENT FUNDS.—If the Secretary finds that the total amount of grants to which States would otherwise be entitled for a fiscal year under subparagraph (A) will exceed the amount of funds that will be made available to provide the grants for the fiscal year, the Secretary shall reduce the grants made to States under this subsection, on a pro rata basis, to the extent necessary.

"(2) REDUCTION.—The Secretary shall reduce the grant of a State by the amount a State has agreed to contribute under subsection (c)(1)(C).".

(b) EMPLOYMENT AND TRAINING FUNDING.—Section 16(h) of the Act (7 U.S.C. 2025(a)), as amended by section 13027(d)(2), is further amended by adding at the end the following:

"(6) BLOCK GRANT STATES.—Each State electing to operate a program under section 25 shall—

"(A) receive the greater of—

"(i) the total dollar value of the funds received under paragraph (1) by the State during fiscal year 1994; or

"(ii) the average per fiscal year of the total dollar value of all funds received under paragraph (1) by the State during each of fiscal years 1992 through 1994; and

"(B) be eligible to receive funds under paragraph (2), within the limitations in section 6(d)(4)(K).".

(c) RESEARCH ON OPTIONAL STATE FOOD ASSISTANCE BLOCK GRANT.—Section 17 of the Act (7 U.S.C. 2026), as amended by section 13055(c)(2), is further amended by adding at the end the following:

"(l) RESEARCH ON OPTIONAL STATE FOOD ASSISTANCE BLOCK GRANT.—The Secretary may conduct research on the effects and costs of a State program carried out under section 25.".

SEC. 13057. AMERICAN SAMOA.

The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), as amended by section 13056, is further amended by adding at the end the following:

"SEC. 26. TERRITORY OF AMERICAN SAMOA.

From amounts made available to carry out this Act, the Secretary may pay to the Territory of American Samoa not more than $5,300,000 for each of fiscal years 1996 through 2002 to finance 100 percent of the expenditures for the fiscal year for a nutrition assistance program extended under section 601(c) of Public Law 96–597 (48 U.S.C. 1469d(c)).".

SEC. 13058. ASSISTANCE FOR COMMUNITY FOOD PROJECTS.

The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), as amended by section 13057, is further amended by adding at the end the following:

"SEC. 27. ASSISTANCE FOR COMMUNITY FOOD PROJECTS.

"(a) DEFINITION OF COMMUNITY FOOD PROJECTS.—In this section, the term 'community food project' means a community-based project that requires a 1-time infusion of Federal assistance to become self-sustaining and that is designed to—

"(1) meet the food needs of low-income people;

"(2) increase the self-reliance of communities in providing for their own food needs; and

"(3) promote comprehensive responses to local food, farm, and nutrition issues.

"(b) AUTHORITY TO PROVIDE ASSISTANCE.—

"(1) IN GENERAL.—From amounts made available to carry out this Act, the Secretary may make grants to assist eligible private nonprofit entities to establish and carry out community food projects.

"(2) LIMITATION ON GRANTS.—The total amount of funds provided as grants under this section for any fiscal year may not exceed $2,500,000.

"(c) ELIGIBLE ENTITIES.—To be eligible for a grant under subsection (b), a private nonprofit entity must—

"(1) have experience in the area of—

"(A) community food work, particularly concerning small and medium-sized farms, including the provision of food to people in low-income communities and the development of new markets in low-income communities for agricultural producers; or

"(B) job training and business development activities for food-related activities in low-income communities;

"(2) demonstrate competency to implement a project, provide fiscal accountability, collect data, and prepare reports and other necessary documentation; and

"(3) demonstrate a willingness to share information with researchers, practitioners, and other interested parties.

"(d) PREFERENCE FOR CERTAIN PROJECTS.—In selecting community food projects to receive assistance under subsection (b), the Secretary shall give a preference to projects designed to—

"(1) develop linkages between 2 or more sectors of the food system;

"(2) support the development of entrepreneurial projects;

"(3) develop innovative linkages between the for-profit and nonprofit food sectors; or

"(4) encourage long-term planning activities and multi-system, interagency approaches.

"(e) MATCHING FUNDS REQUIREMENTS.—

"(1) REQUIREMENTS.—The Federal share of the cost of establishing or carrying out a community food project that receives assistance under subsection (b) may not exceed 50 percent of the cost of the project during the term of the grant.

"(2) CALCULATION.—In providing for the non-Federal share of the cost of carrying out a community food project, the entity

receiving the grant shall provide for the share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services.

"(3) SOURCES.—An entity may provide for the non-Federal share through State government, local government, or private sources.

"(f) TERM OF GRANT.—

"(1) SINGLE GRANT.—A community food project may be supported by only a single grant under subsection (b).

"(2) TERM.—The term of a grant under subsection (b) may not exceed 3 years.

"(g) TECHNICAL ASSISTANCE AND RELATED INFORMATION.—

"(1) TECHNICAL ASSISTANCE.—In carrying out this section, the Secretary may provide technical assistance regarding community food projects, processes, and development to an entity seeking the assistance.

"(2) SHARING INFORMATION.—

"(A) IN GENERAL.—The Secretary may provide for the sharing of information concerning community food projects and issues among and between government, private for-profit and nonprofit groups, and the public through publications, conferences, and other appropriate forums.

"(B) OTHER INTERESTED PARTIES.—The Secretary may share information concerning community food projects with researchers, practitioners, and other interested parties.

"(h) EVALUATION.—

"(1) IN GENERAL.—The Secretary shall provide for the evaluation of the success of community food projects supported using funds under this section.

"(2) REPORT.—Not later than January 30, 2002, the Secretary shall submit a report to Congress regarding the results of the evaluation.".

CHAPTER 2—COMMODITY DISTRIBUTION PROGRAMS

SEC. 13071. EMERGENCY FOOD ASSISTANCE PROGRAM.

(a) DEFINITIONS.—Section 201A of the Emergency Food Assistance Act of 1983 (Public Law 98–8; 7 U.S.C. 612c note) is amended to read as follows:

"SEC. 201A. DEFINITIONS.

"In this Act:

"(1) ADDITIONAL COMMODITIES.—The term 'additional commodities' means commodities made available under section 214 in addition to the commodities made available under sections 202 and 203D.

"(2) AVERAGE MONTHLY NUMBER OF UNEMPLOYED PERSONS.—The term 'average monthly number of unemployed persons' means the average monthly number of unemployed persons in each State in the most recent fiscal year for which information concerning the number of unemployed persons is available, as determined by the Bureau of Labor Statistics of the Department of Labor.

"(3) ELIGIBLE RECIPIENT AGENCY.—The term 'eligible recipient agency' means a public or nonprofit organization—

"(A) that administers—

"(i) an emergency feeding organization;

"(ii) a charitable institution (including a hospital and a retirement home, but excluding a penal institution) to the extent that the institution serves needy persons;

"(iii) a summer camp for children, or a child nutrition program providing food service;

"(iv) a nutrition project operating under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), including a project that operates a congregate nutrition site and a project that provides home-delivered meals; or

"(v) a disaster relief program;

"(B) that has been designated by the appropriate State agency, or by the Secretary; and

"(C) that has been approved by the Secretary for participation in the program established under this Act.

"(4) EMERGENCY FEEDING ORGANIZATION.—The term 'emergency feeding organization' means a public or nonprofit organization that administers activities and projects (including the activities and projects of a charitable institution, a food bank, a food pantry, a hunger relief center, a soup kitchen, or a similar public or private nonprofit eligible recipient agency) providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons.

"(5) FOOD BANK.—The term 'food bank' means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

"(6) FOOD PANTRY.—The term 'food pantry' means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

"(7) POVERTY LINE.—The term 'poverty line' has the same meaning given the term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

"(8) SOUP KITCHEN.—The term 'soup kitchen' means a public or charitable institution that, as integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

"(9) TOTAL VALUE OF ADDITIONAL COMMODITIES.—The term 'total value of additional commodities' means the actual cost of all additional commodities made available under section 214 that are paid by the Secretary (including the distribution and processing costs incurred by the Secretary).

"(10) VALUE OF ADDITIONAL COMMODITIES ALLOCATED TO EACH STATE.—The term 'value of additional commodities allocated to each State' means the actual cost of additional com-

modities made available under section 214 and allocated to each State that are paid by the Secretary (including the distribution and processing costs incurred by the Secretary).".

(b) STATE PLAN.—Section 202A of the Act (7 U.S.C. 612c note) is amended to read as follows:

"SEC. 202A. STATE PLAN.

"(a) IN GENERAL.—To receive commodities under this Act, a State shall submit a plan of operation and administration every 4 years to the Secretary for approval. The plan may be amended at any time, with the approval of the Secretary.

"(b) REQUIREMENTS.—Each plan shall—

"(1) designate the State agency responsible for distributing the commodities received under this Act;

"(2) set forth a plan of operation and administration to expeditiously distribute commodities under this Act;

"(3) set forth the standards of eligibility for recipient agencies; and

"(4) set forth the standards of eligibility for individual or household recipients of commodities, which shall require—

"(A) individuals or households to be comprised of needy persons; and

"(B) individual or household members to be residing in the geographic location served by the distributing agency at the time of applying for assistance.

"(c) STATE ADVISORY BOARD.—The Secretary shall encourage each State receiving commodities under this Act to establish a State advisory board consisting of representatives of all interested entities, both public and private, in the distribution of commodities received under this Act in the State.".

(c) AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATIVE FUNDS.—Section 204(a)(1) of the Act (7 U.S.C. 612c note) is amended—

(1) in the first sentence—

(A) by striking "1991 through 1995' and inserting "1996 through 2002"; and

(B) by striking "for State and local" and all that follows through "under this title" and inserting "to pay for the direct and indirect administrative costs of the State related to the processing, transporting, and distributing to eligible recipient agencies of commodities provided by the Secretary under this Act and commodities secured from other sources"; and

(2) by striking the fourth sentence.

(d) DELIVERY OF COMMODITIES.—Section 214 of the Act (7 U.S.C. 612c note) is amended—

(1) by striking subsections (a) through (e) and (j);

(2) by redesignating subsections (f) through (i) as subsections (a) through (d), respectively;

(3) in subsection (b), as redesignated by paragraph (2)—

(A) in the first sentence, by striking "subsection (f) or subsection (j) if applicable," and inserting "subsection (a)"; and

(B) in the second sentence, by striking "subsection (f)" and inserting "subsection (a)";

(4) by striking subsection (c), as redesignated by paragraph (2), and inserting the following:

"(c) ADMINISTRATION.—

"(1) IN GENERAL.—Commodities made available for each fiscal year under this section shall be delivered at reasonable intervals to States based on the grants calculated under subsection (a), or reallocated under subsection (b), before December 31 of the following fiscal year.

"(2) ENTITLEMENT.—Each State shall be entitled to receive the value of additional commodities determined under subsection (a)."; and

(5) in subsection (d), as redesignated by paragraph (2), by striking "or reduce" and all that follows through "each fiscal year".

(e) TECHNICAL AMENDMENTS.—The Act (7 U.S.C. 612c note) is amended—

(1) in the first sentence of section 203B(a), by striking "203 and 203A of this Act" and inserting "203A";

(2) in section 204(a), by striking "title" each place it appears and inserting "Act";

(3) in the first sentence of section 210(e), by striking "(except as otherwise provided for in section 214(j))"; and

(4) by striking section 212.

(f) REPORT ON EFAP.—Section 1571 of the Food Security Act of 1985 (Public Law 99–198; 7 U.S.C. 612c note) is repealed.

(g) AVAILABILITY OF COMMODITIES UNDER THE FOOD STAMP PROGRAM.—The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), as amended by section 13058, is further amended by adding at the end the following:

"SEC. 28. AVAILABILITY OF COMMODITIES FOR THE EMERGENCY FOOD ASSISTANCE PROGRAM.

"(a) PURCHASE OF COMMODITIES.—From amounts appropriated under this Act, for each of fiscal years 1997 through 2002, the Secretary shall purchase $300,000,000 of a variety of nutritious and useful commodities of the types that the Secretary has the authority to acquire through the Commodity Credit Corporation or under section 32 of the Act entitled 'An Act to amend the Agricultural Adjustment Act, and for other purposes', approved August 24, 1935 (7 U.S.C. 612c), and distribute the commodities to States for distribution in accordance with section 214 of the Emergency Food Assistance Act of 1983 (Public Law 98–8; 7 U.S.C. 612c note).

"(b) BASIS FOR COMMODITY PURCHASES.—In purchasing commodities under subsection (a), the Secretary shall, to the extent practicable and appropriate, make purchases based on—

"(1) agricultural market conditions;

"(2) preferences and needs of States and distributing agencies; and

"(3) preferences of recipients.".

(h) EFFECTIVE DATE.—The amendments made by subsection (d) shall become effective on October 1, 1996.

Subtitle K—Miscellaneous

SEC. 13101. FOOD STAMP ELIGIBILITY

Section 6(f) of the Food Stamp Act of 1977 (7 U.S.C. 2015(f)) is amended by striking the third sentence and inserting the following: The State agency shall, at its option, consider either all income and financial resources of the individual rendered ineligible to participate in the food stamp program under this subsection, or such income, less a pro rata share, and the financial resources of the ineligible individual, to determine the eligibility and the value of the allotment of the household of which such individual is a member.'

SEC. 13102. REDUCTION IN BLOCK GRANTS FOR SOCIAL SERVICES.

Section 2003(c) of the Social Security Act (42 U.S.C. 1397b) is amended—

(1) by striking 'and' at the end of paragraph (4); and

(2) by striking paragraph (5) and inserting the following:

'(5) $2,800,000,000 for each of the fiscal years 1990 through 1996; and

'(6) $2,240,000,000 for each fiscal year after fiscal year 1996.'.

Subtitle L—Reform of the Earned Income Credit

SEC. 13200. AMENDMENT OF 1986 CODE.

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 Internal Revenue Code of 1986.

SEC. 13201. EARNED INCOME CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.

(a) IN GENERAL.—Section 32(c)(1) (relating to individuals eligible to claim the earned income credit) is amended by adding at the end the following new subparagraph:

"(F) IDENTIFICATION NUMBER REQUIREMENT.—The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—

"(i) such individual's taxpayer identification number, and

"(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse.".

(b) SPECIAL IDENTIFICATION NUMBER.—Section 32 is amended by adding at the end the following new subsection:

"(l) IDENTIFICATION NUMBERS.—Solely for purposes of subsections (c)(1)(F) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act.".

(c) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Section 6213(g)(2) (relating to the definition

of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting a comma, and by inserting after subparagraph (E) the following new subparagraphs:

"(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return, and

"(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13202. REPEAL OF EARNED INCOME CREDIT FOR INDIVIDUALS WITHOUT CHILDREN.

(a) IN GENERAL.—Subparagraph (A) of section 32(c)(1) (defining eligible individual) is amended to read as follows:

"(A) IN GENERAL.—The term 'eligible individual' means any individual who has a qualifying child for the taxable year.".

(b) CONFORMING AMENDMENTS.—Each of the tables contained in paragraphs (1) and (2) of section 32(b) are amended by striking the items relating to no qualifying children.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13203. MODIFICATION OF EARNED INCOME CREDIT AMOUNT AND PHASEOUT.

(a) MODIFICATION OF PHASEOUT.—Subparagraph (B) of section 32(a)(2) is amended to read as follows:

"(B) the sum of—

"(i) the initial phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the initial phaseout amount but does not exceed the final phaseout amount, plus

"(ii) the final phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the final phaseout amount."

(b) PERCENTAGES AND AMOUNTS.—

(1) IN GENERAL.—Subsection (b) of section 32, as amended by section 13202(b), is amended to read as follows:

"(b) PERCENTAGES AND AMOUNTS.—

"(1) PERCENTAGES.—The credit percentage, the initial phaseout percentage, and the final phaseout percentage shall be determined as follows:

"In the case of an eligible individual with:	*The credit percentage is:*	*The initial phaseout percentage is:*	*The final phaseout percentage is:*
1 qualifying child	*34*	*15.98*	*20*
2 or more qualifying children	*36*	*21.06*	*25*

"(2) AMOUNTS.—The earned income amount, the initial phaseout amount, and the final phaseout amount shall be determined as follows:

"In the case of an eligible individual with:	*The earned income amount is:*	*The initial phaseout amount is:*	*The final phaseout amount is:*
1 qualifying child	*$6,340*	*$11,630*	*$14,850*
2 or more qualifying children	*$8,910*	*$11,630*	*$17,750".*

(2) INCREASE IN CREDIT FOR LOWER-INCOME FAMILIES HAVING 2 MORE QUALIFYING CHILDREN.—Subsection (d) of section 32 is amended to read as follows:

"(d) INCREASE IN CREDIT FOR LOWER-INCOME FAMILIES HAVING 2 OR MORE QUALIFYING CHILDREN.—

"(1) IN GENERAL.—If an eligible individual has 2 or more qualifying children, for purposes of applying paragraphs (1) and (2)(A) of subsection (a)—

"(A) the amount of the taxpayer's earned income shall be treated as being equal to $^{10}\!/_{9}$ of such income (determined without regard to this paragraph), and

"(B) the earned income amount shall be treated as being equal to $^{10}\!/_{9}$ of such amount (determined without regard to this paragraph).

"(2) PHASEOUT OF BENEFIT.—If the applicable income of the taxpayer for the taxable year exceeds $14,000 ($17,000 in the case of a joint return), the amount of each increase under paragraph (1) shall be reduced (but not below zero) by an amount which bears the same ratio to such increase (determined without regard to this subparagraph) as such excess bears to $4,000.

"(3) APPLICABLE INCOME.—For purposes of this subsection, the term 'applicable income' means adjusted gross income or, if greater, earned income."

(3) CONFORMING AMENDMENTS.—

(A) Subsection (j) of section 32 is amended—

(i) by striking "subsection (b)(2)(A)" and inserting "subsection (b)(2) or (d)",

(ii) by striking "1994" and inserting "1996", and

(iii) by striking "1993" and inserting "1995".

(B) Subsection (e) of section 32 is amended to read as follows:

"(e) OTHER SPECIAL RULES—

"(1) MARRIED INDIVIDUALS.—In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year.

"(2) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of an individual, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13204. RULES RELATING TO DENIAL OF EARNED INCOME CREDIT ON BASIS OF DISQUALIFIED INCOME.

(a) DEFINITION OF DISQUALIFIED INCOME.—Paragraph (2) of section 32(i) (defining disqualified income) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) the excess (if any) of—

"(i) the aggregate income from all passive activities for the taxable year (determined without regard to any amount described in a preceding subparagraph), over

"(ii) the aggregate losses from all passive activities for the taxable year (as so determined).

For purposes of subparagraph (D), the term 'passive activity' has the meaning given such term by section 469.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13205. MODIFICATION OF ADJUSTED GROSS INCOME DEFINITION FOR EARNED INCOME CREDIT.

(a) IN GENERAL.—Subsections (a)(2), (c)(1)(C), (d), and (f)(2)(B) of section 32, as amended by the preceding sections of this subtitle, are each amended by striking "adjusted gross income" each place it appears and inserting "modified adjusted gross income".

(b) MODIFIED ADJUSTED GROSS INCOME DEFINED.—Section 32(c) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(5) MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The term 'modified adjusted gross income' means adjusted gross income—

"(i) increased by the sum of the amounts described in subparagraph (B), and

"(ii) determined without regard to—

"(I) the amounts described in subparagraph (C), or

"(II) the deduction allowed under section 172.

"(B) NONTAXABLE INCOME TAKEN INTO ACCOUNT.—Amounts described in this subparagraph are—

"(i) social security benefits (as defined in section 86(d)) received by the taxpayer during the taxable year to the extent not included in gross income,

"(ii) amounts which—

"(I) are received during the taxable year by (or on behalf of) a spouse pursuant to a divorce or separation instrument (as defined in section 71(b)(2)), and

"(II) under the terms of the instrument are fixed as payable for the support of the children of the payor spouse (as determined under section 71(c)),

but only to the extent such amounts exceed $6,000,

"(iii) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

"(iv) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income. Clause (iv) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b)(8), 408(d) (3), (4), or (5), or 457(e)(10).

"(C) CERTAIN AMOUNTS DISREGARDED.—an amount is described in this subparagraph if it is—

"(i) the amount of losses form sales or exchanges of capital assets in excess of gains from such sales or exchanges to the extent such amount does not exceed the amount under section 1211(b)(1),

"(ii) the net loss from the carrying on of trades or businesses, computed separately with respect to—

"(I) trades or businesses (other than farming) conducted as sole proprietorships,

"(II) trades or businesses of farming conducted as sole proprietorships, and

"(III) other trades or business,

"(iii) the net loss from estates and trusts, and

"(iv) the excess (if any) of amounts described in subsection (i)(2)(C)(ii) over the amounts described in subsection (i)(2)(C)(i) (relating to nonbusiness rents and royalties).

For purposes of clause (ii), there shall not be taken into account items which are attributable to a trade or business which consists of the performance of services by the taxpayer as an employee.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 13206. PROVISIONS TO IMPROVE TAX COMPLIANCE.

(a) INCREASE IN PENALTIES FOR RETURN PREPARERS.—

(1) UNDERSTATEMENT PENALTY.—Section 6694 (relating to understatement of income tax liability by income tax return preparer) is amended—

(A) by striking "$250" in subsection (a) and inserting "$500", and

(B) by striking "$1,000" in subsection (b) and inserting "$2,000".

(2) OTHER ASSESSABLE PENALTIES.—Section 6695 (relating to other assessable penalties) is amended—

(A) by striking "$50" and "$25,000" in subsections (a), (b), (c), (d), and (e) and inserting "$100" and "$50,000", respectively, and

(B) by striking "$500" in subsection (f) and inserting "$1,000".

(b) AIDING AND ABETTING PENALTY.—Section 6701(b) (relating to amount of penalty) is amended—

(1) by striking "$1,000" in paragraph (1) and inserting "$2,000", and

(2) by striking "10,000" in paragraph (2) and inserting "20,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties with respect to taxable years beginning after December 31, 1995.

Subtitle M—Clinical Laboratories

SEC. 13301. EXEMPTION OF PHYSICIAN OFFICE LABORATORIES.

Section 353(d) of the Public Health Service Act (42 U.S.C. 263a(d)) is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5) and by adding after paragraph (1) the following:

"(2) EXEMPTION OF PHYSICIAN OFFICE LABORATORIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a clinical laboratory in a physician's office (including an office of a group of physicians) which is directed by a physician and in which examinations and procedures are either performed by a physician or by individuals supervised by a physician solely as an adjunct to other services provided by the physician's office is exempt from this section.

"(B) EXCEPTION.—A clinical laboratory described in subparagraph (A) is not exempt from this section when it performs a pap smear (Papanicolaou Smear) analysis.

"(C) DEFINITION.—For purposes of subparagraph (A), the term 'physician' has the same meaning as is prescribed for such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).";

(2) in paragraph (3) (as so redesignated) by striking "(3)" and inserting "(4)"; and

(3) in paragraphs (4) and (5) (as so redesignated) by striking "(2)" and inserting "(3)".

And the Senate agree to the same.

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

JOHN R. KASICH,
ROBERT S. WALKER,
DICK ARMEY,
TOM DELAY,
JOHN BOEHNER,

As additional conferees from the Committee on the Budget, for consideration of title XX of the House bill, and modifications committed to conference:

JIM KOLBE,
CHRISTOPHER SHAYS,
DAVE HOBSON,

As additional conferees from the Committee on Agriculture, for consideration of title I of the House bill, and subtitles A–C of title I of the Senate amendment, and modifications committed to conference:

PAT ROBERTS,
BILL EMERSON,

As additional conferees from the Committee on Banking and Financial Services, for consideration of title II of the House bill, and title III of the Senate amendment, and modifications committed to conference:

JAMES A. LEACH,
BILL MCCOLLUM,
MARGE ROUKEMA,

As additional conferees from the Committee on Commerce, for consideration of title III of the House bill, and subtitle A of title IV, subtitles A and G of title V, and section 6004 of the Senate amendment, and modifications committed to conference:

TOM BLILEY,
DAN SCHAEFER,

As additional conferees from the Committee on Commerce, for consideration of title XV of the House bill, and subtitle A of title VII of the Senate amendment, and modifications committed to conference:

TOM BLILEY,
MICHAEL BILIRAKIS,
J. DENNIS HASTERT,
JAMES GREENWOOD,

As additional conferees from the Committee on Commerce, for consideration of title XVI of the House bill, and subtitle B of title VII of the Senate amendment, and modifications committed to conference:

TOM BLILEY,
MICHAEL BILIRAKIS,
BILLY TAUZIN,
JOE BARTON,
BILL PAXON,
J. DENNIS HASTERT,
JAMES GREENWOOD,
RALPH M. HALL,

As additional conferees from the Committee on Economic and Educational Opportunities, for consideration of title IV of the House bill, and title X of the Senate amendment, and modifications committed to conference:

WILLIAM F. GOODLING,
BUCK MCKEON,

As additional conferees from the Committee on Government Reform and Oversight, for consideration of title V of the House bill, and title VIII and sections 13001 and 13003 of the Senate amendment, and modifications committed to conference:

BILL CLINGER,
STEVEN SCHIFF,

As additional conferees from the Committee on International Relations, for consideration of title VI of the House bill, and section 13002 of the Senate amendment, and modifications committed to conference:

BEN GILMAN,
DAN BURTON,

As additional conferees from the Committee on the Judiciary, for consideration of title VII of the House bill, and title IX and section 12944 of the Senate amendment, and modifications committed to conference:

HENRY HYDE,
CARLOS J. MOORHEAD,

As additional conferees from the Committee on National Security, for consideration of title VIII of the House bill, and title II of the Senate amendment, and modifications committed to conference:

FLOYD SPENCE,
DUNCAN HUNTER,

As additional conferees from the Committee on Resources, for consideration of title IX of the House bill, and title V (except subtitles A and G) of the Senate amendment, and modifications committed to conference:

DON YOUNG,
BILLY TAUZIN,

As additional conferees from the Committee on Transportation and Infrastructure, for consideration of title X of the House bill, and subtitles B and C of title IV and title VI (except section 6004) of the Senate amendment, and modifications committed to conference:

BUD SHUSTER,
BILL CLINGER,

As additional conferees from the Committee on Veterans' Affairs, for consideration of title XI of the House bill, and title XI of the Senate amendment, and modifications committed to conference:

ROBERT STUMP,
TIM HUTCHINSON,
G.V. MONTGOMERY,

As additional conferees from the Committee on Ways and Means, for consideration of titles XII, XIII, XIV, and XIX of the House bill, and subtitles H and I of title VII and title XII (except section 12944) of the Senate amendment, and modifications committed to conference:

BILL ARCHER,
PHIL CRANE,
WM. THOMAS,
E. CLAY SHAW, Jr.,
JIM BUNNING,

As additional conferees from the Committee on Ways and Means, for consideration of title XV of the House bill, and subtitle A of title VII of the Senate amendment, and modifications committed to conference:

BILL ARCHER,
WM. THOMAS,
NANCY L. JOHNSON,
JIM McCRERY,
Managers on the Part of the House.

From the Committee on the Budget for consideration of all titles:

PETE V. DOMENICI,
CHUCK GRASSLEY,

From the Committee on Agriculture, Nutrition, and Forestry:

DICK LUGAR
(for consideration of all of title I),
BOB DOLE
(for consideration of all of title I),
JESSE HELMS
(for consideration of section 113 and subtitle D),
THAD COCHRAN
(for consideration of title I, except sections 1106, 1108, 1113, and subtitle D),
LARRY E. CRAIG
(for consideration of sections 1106 and 1108),

From the Committee on Armed Services:

STROM THURMOND,
JOHN MCCAIN,

From the Committee on Banking, Housing, and Urban Affairs:

ALFONSE M. D'AMATO,
PHIL GRAMM,

From the Committee on Commerce, Science, and Transportation:

LARRY PRESSLER,
TED STEVENS,
JOHN MCCAIN,

From the Committee on Energy and Natural Resources:

FRANK H. MURKOWSKI,
MARK O. HATFIELD,
DON NICKLES,

From the Committee on Environment and Public Works:

JOHN H. CHAFEE,
JOHN WARNER,
BOB SMITH,

From the Committee on Finance:

WILLIAM V. ROTH, Jr.,
BOB DOLE,

From the Committee on Governmental Affairs (and for consideration of the title of the House bill relating solely to abolishing the Department of Commerce):

TED STEVENS,
FRED THOMPSON,

From the Committee on the Judiciary:

ORRIN HATCH,
CHUCK GRASSLEY,

From the Committee on Labor and Human Resources:

NANCY LANDON KASSEBAUM,
DAN COATS,
BILL FRIST,

From the Committee on Veterans' Affairs:

ALAN K. SIMPSON,
FRANK H. MURKOWSKI,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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 the bill (H.R. 2491) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996, 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:

TITLE I—AGRICULTURE

(Numbers in parentheses refer to the section numbers of the provisions in the House Bill (H), the Senate Amendment (S), and the Conference Report (CR))

The Managers on the part of the House and the Senate on title I of the bill met to resolve a number of issues in disagreement between the House Bill and the Senate Amendment. A number of provisions agreed to by the Managers are included in the Conference Substitute. However, a number of provisions that were agreed to by the Managers were subsequently removed from the Conference Substitute pursuant to the Manager's agreement that provisions potentially violative of section 313 of the Congressional Budget Act of 1974, commonly referred to as the "Byrd Rule", be removed from the Conference Substitute.

The Byrd Rule provides, in pertinent part, that during Senate debate on a reconciliation conference report, any Senator may make a point of order against extraneous material that, if sustained, will result in the extraneous material being stricken and result in the Conference Report being sent back to the House. The Rule also provides guidance as to what constitutes extraneous matter in a reconciliation conference report.

SUBTITLE A—AGRICULTURAL MARKET TRANSITION PROGRAM

DEFINITIONS (H. , S. , CR. 1102)

The *House Bill* authorized the Secretary to enter into a 7-year market transition contract (1996 to 2002) with eligible owners and operators on a farm containing eligible farmland. The land on the farm must have been enrolled in 1 or more of the annual upland cotton, rice, feed grain, or wheat programs, or contain considered planted acreage, for a total of at least 1 of the 1991 through 1995 crop years to be eligible for a Freedom to Farm contract.

The *Senate Amendment* required that the land on a farm must have been enrolled in 1 or more of the annual upland cotton, rice, feed grain, or wheat programs, or contain considered planted acreage, for a total of at least 3 of the 1991 through 1995 crop years to participate in an annual commodity program in calendar years 1996–2002.

The *Conference Substitute* amends the *House* provision and establishes the 1996 contract acreage and payment yield as the 1996 crop acreage base and yield that would have been established under the Agriculture Act of 1949 (that is repealed, except that certain of its provisions are inserted in the Agricultural Adjustment Act of 1938). To be eligible for a production flexibility contract, the land on a farm must have been enrolled in 1 or more of the annual upland cotton, rice, feed grain, or wheat programs, or contain considered planted acreage, for a total of at least 1 of the 1991 through 1995 crop years on the farm.

PRODUCTION FLEXIBILITY CONTRACTS (H. , S. , CR 1103)

The *House Bill* describes the terms owner and operator as those eligible to enter into contracts, and instructs the Secretary to provide adequate safeguards to protect the interests of operators who are tenants and sharecroppers. The bill establishes a contract system of guaranteed annual payments to owners and operators over fiscal years 1996–2002 that describes eligible farmland as that which contains a crop acreage base, at least a portion of which was enrolled in the acreage reduction programs for the major farm program crops (wheat, feed grains, cotton and rice) during one of the 1991 through 1995 crop years, including zero certified considered planted acreage. Conservation reserve program (CRP) acreage that contains crop acreage base was made eligible for transfer into a Freedom to Farm contract.

The yearly spending limits under the House bill are derived by scoring all the deficiency payments made to producers during crop years 1991–1995 based on budget baseline spending for the farm commodities and then adjusting them by subtracting payments made in fiscal years 1996 and 1997 based on payments due producers based on their 1994 and 1995 programs on which payment balances are due. Then, adding producer *repayments* of deficiency payments received by the Secretary during fiscal years 1996 and 1997; adding market transition contract payments withheld at the request of producers during the preceding fiscal year as an offset against repayments of deficiency payments otherwise due; and adding penalties assessed in market transition contracts which are refunded during the preceding fiscal year.

Individual owner and operator contract payments are determined by establishing a producer's production history, divided by the total national percentage of programs payments for the program crop, divided by the producer's yield history for the crop. The 1996 and 1997 total contract payments include the 1994 and 1995 crop deficiency payments that are to be made or are unearned and would have been refunded due to favorable market price conditions. Acreage reduction authorities are repealed and 0/50/85/92 programs are repealed.

The *Senate Amendment* amends Sec. 302, 303, 304 and 305 of the Agricultural Act of 1949—

(1) by reauthorizing the rice, upland cotton, feed grain and wheat programs through 2002;

(2) by increasing unpaid flex acres to 30%;

(3) by establishing a maximum deficiency payment rate based on the February, 1995 Congressional Budget Office baseline for deficiency payments;

CBO BASELINE DEFICIENCY PAYMENTS, FEBRUARY, 1995

Crop		Crop year—						
		1996	1997	1998	1999	2000	2001	2002
Corn	$/bu	0.53	0.53	0.57	0.56	0.53	0.54	0.55
Sorghum	$/bu	0.59	0.59	0.63	0.61	0.59	0.60	0.61
Barley	$/bu	0.45	0.43	0.44	0.42	0.39	0.39	0.40
Oats	$/bu	0.12	0.11	0.12	0.11	0.09	0.09	0.10
Wheat	$/bu	0.89	0.94	0.95	0.89	0.79	0.78	0.71
Cotton	$/lb	0.086	0.121	0.131	0.136	0.130	0.120	0.115
Rice	$/cwt	4.21	4.19	3.86	3.48	3.23	2.89	2.66

Source: Congressional Budget Office, February, 1995 Baseline.

(4) by eliminating the authority to impose acreage reduction requirements;

(5) by retaining current law provisions regarding haying and grazing;

(6) in the 0/85 option for feed grains and rice by (1) paying on 85% of the payment acres devoted to conserving uses, planted to alternative crops, reduced yields, and oilseeds options, and (2) terminating 0/85 payments for prevented planting;

(7) in the 50/85 option for Rice by (1) changing the 50% minimum planting requirement to 25%, (2) paying on 75% of the payment acres devoted to conserving uses or planted to alternative crops instead of 85%, (3) paying on 75% of the payment acres for reduced yields, and oilseeds options, and (4) terminating 0/85 payments for prevented planting;

(8) in the 50/85 option for upland cotton by (1) eliminating the 50% minimum planting requirement, (2) by paying on 85% of the payment acres devoted to conserving uses, planted to alternative crops, reduced yields, and oilseeds options, and (3) terminating 0/85 payments for prevented planting;

(9) by terminating the 8 month nonrecourse loan extension for upland cotton; and

(10) by requiring producers to pay the storage costs for upland cotton put under loan.

The *Conference Substitute* adopts the *House* provision with an amendment to establish a 7-year production flexibility contract. Contract holders must comply with existing conservation compliance and wetlands protection regulations, and planting flexibility restrictions. Contracts are to be entered into by April 15, 1996, and will extend through the 2002 crop. (Land may be enrolled in a contract after this date if it is covered by a Conservation Reserve Contract which expires or is voluntarily terminated by a producer after April 15, 1996.)

Annual payments are to be made by September 30 of each year, with an advance payment of 50% payable to the producer, at his or her option, not later than December 15 of the previous calendar year. (For the 1996 crops, however, the advance is to be paid within 60 days of the date the producer signs his or her contract.)

Total payments under all contracts are established at levels derived from the February 1995 Congressional Budget Office budget baseline estimate of 1996–2002 crop deficiency payments. Each year, 46.22% of the payments are to be made for corn, 5.11% for grain sorghum, 2.16% for barley, 0.15% for oats, 26.26% for wheat, 11.63% for upland cotton and 8.47% for rice.

The amounts available for contract payments will be adjusted by (1) subtracting any final deficiency payments for the 1994 and 1995 crops made in fiscal years 1996 or 1997; (2) adding repayments of unearned advance deficiency payments for the 1995 crops; (3) adding amounts deducted as offsets requested by producers in lieu of repaying unearned advance deficiency payments; and (4) adding any contract payments refunded by producers who violate or cancel their contracts.

To calculate contract payments, USDA will establish a payment quantity for each contract commodity on a farm, equal to 85% of the farm's contract acreage multiplied by the farm's payment yield for that commodity. For each commodity, the payment quantity will then be multiplied by the payment rate to obtain the annual payment amount. (The payment rate is determined by dividing the total payment quantities for all contracts covering a particular commodity by the dollars available for that commodity.)

PLANTING FLEXIBILITY AND LOAN ELIGIBILITY (H. 1102, H. 1103, S. 1109, CR. 1103)

The *House Bill* repeals Title V of the Agricultural Act of 1949 that provided for the establishment and maintenance of program bases and yields and also provided for planting flexibility under the 1991–1995 acreage reduction programs.

The *House Bill* provides that for the 1996 through 2002 crop years the Freedom to Farm transition program—

(1) allows the planting of any program crop, oilseed, industrial or experimental crop, mung beans, lentils and dry peas on payment acres (historical base acres);

(2) restricts the planting of fruits or vegetables on payment acres;

(3) restricts haying and grazing on payment acres during a 5-month period between April 1 and October 31; and

(4) makes all program crop production of contract holders eligible for loan programs. (See marketing assistance loans discussed infra.)

The *Senate Amendment* amends Title V of the Agricultural Act of 1949—

(1) by precluding the planting of fruits or vegetables (except lentils and peas), on paid acreage of a crop acreage base (70% of historical base);

(2) by allowing full planting flexibility and unlimited haying and grazing on unpaid flex acres (30%) of a crop acreage base;

(3) by allowing the planting of wheat, feed grains, or oilseeds on all acreage on a farm with full loan eligibility;

(4) by allowing full planting flexibility on wheat or feed grain crop acreage base, without loss of base history or deficiency payments;

(5) by allowing alternate crops to be planted on up to 100% of the upland cotton or rice acreage base without loss of base history, but with loss of deficiency payments;

(6) by precluding a producer with a wheat or feed grain crop acreage base and an upland cotton or rice crop acreage base from receiving deficiency payments with respect to rice or upland cotton planted in excess of the upland cotton or rice crop acreage base;

(7) by precluding deficiency payments for rice or upland cotton if planted in excess of the crop acreage base;

(8) by allowing the receipt of loans for planting upland cotton or rice in excess of the upland cotton or rice crop acreage base on up to 25% of the historical soybean acres, or on the unpaid flex acres of a crop acreage base; and

(9) by freezing the payment yield at the 1990 level.

The *Conference Substitute* adopts an amendment with a *Senate* approach to establish contract payment acres as 85% of historical base acreage. There are no restrictions on planting or haying and grazing on non-payment acres (15% of the contract acres); haying and grazing is restricted on payment acres during the 5 principal growing months between April 1 and October 31; and planting of fruits or vegetables is not allowed on payment acres. The *Conference Substitute* allows the planting of any program crop, oilseed, industrial or experimental crop, mung beans, lentils and dry peas on contract acres (historical base acres). All loan commodity production on a farm of contract holders is eligible for the marketing loan program. In the case of a loan for extra long staple cotton and oilseeds, all production is eligible for a marketing loan. In addition, alfalfa may be planted on contract acreage in excess of the acreage limitation except that the payment under the owner or operator's contract will be reduced if the alfalfa acreage, taken together with acreage of fruits and vegetables and haying and grazing, exceeds 15%.

It is the intent of the Managers that the Secretary utilize random, spot-checks for verification, and rely upon producer certification to enforce the flexibility provisions.

NONRECOURSE MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS (H. 1103, S. SUBTITLE A, CR. 1104)

The *House Bill* amends the Agriculture Act of 1949 by inserting after section 102 a new section 102A that establishes a nonrecourse marketing assistance loan for certain crops.

The *House Bill* in section 102A(a)(1), directs the Secretary to make nonrecourse marketing assistance loans available to eligible producers of wheat, feed grains, upland cotton, extra long staple cotton, rice, and oilseeds for each of the 1996 through 2002 crops of such commodities at a loan rate calculated at 70 percent of the simple average price received by producers during the immediately preceding five crops years (a rolling average). Loan rate adjustment authority contained in the Agricultural Act of 1949 was repealed. Such marketing assistance loans had a term of nine months, and could not be extended by the Secretary. Only a producer whose land was subject to a market transition contract was eligible for a marketing assistance loan.

New section 102A(g) provided that the Secretary could not make payments to producers to cover storage charges incurred in connection with marketing assistance loans.

Provisions were also added that converted these marketing assistance loans into marketing loans, but the Secretary was authorized to reduce the loan level below 70% if it was estimated that the Commodity Credit Corporation would assume ownership of the commodity.

The *Senate Amendment* extends loan and marketing loan provisions of the Agriculture Act of 1949 from 1996 through 2002, using the same formulas for calculating loan rates, adjusting rates, establishing minimum rates and determining loan repayment levels as in current law. The Senate Amendment repeals the 8-month loan extension for cotton and requires producers to prepay the storage costs for upland cotton put under loan.

The *Conference Substitute* adopts the *Senate* provision with an amendment that would establish a maximum loan rate at the 1995 level:

(1) Rice: $6.50/cwt
(2) Upland Cotton: $0.5192/lb
(3) Wheat: $2.58/bu
(4) Corn: $1.89/bu
(5) Soybeans: $4.92/bu
(6) ELS Cotton: $0.7965/lb

For rice and oilseeds, the *Conference Substitute* establishes loan rates at the 1995 level. For wheat and feed grains, the *Conference Substitute* extends authority to reduce loan rates because of the estimated stocks-to-use level, but does not extend authority to reduce loan rates further to maintain competitiveness. Upland cotton loan rates can move between the new cap ($0.5912) and the $0.50 per lb. floor. ELS cotton is eligible for a non-recourse loan only.

The *Conference Substitute* also adopts the provision to eliminate the 8-month upland cotton loan extension, but retains a 10-month upland cotton loan and does not require producers to prepay storage costs for upland cotton placed under loan.

To minimize loan forfeitures and provide for the continued effective operation of the marketing loan, the Managers expect the Secretary to extend the provisions of current regulations to provide that the upland cotton loan repayment rate is the lesser of the Adjusted World Price (AWP) or the loan principal plus accrued interest, storage and other changes. It is the intention of the Managers that the prevailing world market price for upland cotton be established in a manner that is consistent with procedures used for that purpose for 1990-1995 crops.

COTTON USER MARKETING CERTIFICATES (H. , S. 1103, CR. 1104(f)(2))

The *House Bill* amends the Agriculture Act of 1949 by repeal of 103B(5)(E), which provides marketing certificates to domestic users and exporters when the price of cotton in the U.S. exceeds the Norther European price by more than 1.25 cents per pound.

The *Senate Amendment* amends Sec. 103B(5)(E) of the Agricultural Act of 1949 by increasing the price trigger from 1.25 cents to 2.50 cents per pound.

The *Conference Report* adopts the *Senate* position with an amendment that retains the trigger at 1.25 cents, but prohibits the Secretary from expending in excess of $701 million on this program during fiscal years 1996-2002. Exporters participating in the Cotton User Marketing Certificate program will not be able to lock-in a certificate value until the date of export as determined by the Secretary.

The Managers intend that upon enactment, the Secretary is directed to issue regulations such that in the event this limitation is reached, the special import quota provided in paragraph (3) will be established following a consecutive four-week period in which the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) one and three-thirty seconds inch cotton, delivered C.I.F. Northern Europe exceeds the Northern Europe price by more than 1.25 cents per pound.

PAYMENT LIMITATIONS (H. 1104, H. 1401(A)(2), S. 1120, CR. 1105)

The *House Bill*, section 1104(a), amends section 1001(5)(C)(i), that directs that the Secretary, in the case of payments to corporations and other entities described in section 1001(B)(i)(II), to attribute payments to individuals in proportion to their ownership interests in the corporation or entity receiving the payment, or in any other corporation or entity that has a substantial beneficial interest in the corporation or entity actually receiving the payment. The provisions of this subparagraph shall apply to individuals who hold or acquire, directly or through another corporation or entity, a substantial beneficial interest in the corporation or entity actually receiving the payment.

The *House Bill* amends section 1001(5)(C)(ii), that directs the Secretary, in the case of payments to corporations and other entities described in section 1001(B)(i)(II), to also attribute payments to any State (or political subdivision or agency thereof) or other corporation or entity that has a substantial beneficial interest in the corporation or entity actually receiving the payment in proportion to their ownership interests in the corporation or entity receiving the payment. The provisions of this subparagraph shall apply even if the payments are also attributable to individuals under clause (i).

The *House Bill* amends section 1001(5)(C)(iii), and provides that for purposes of subparagraph (C), substantial beneficial interest' means not less than five percent of all beneficial interests in the corporation or entity actually receiving the payment, except that the Secretary may set a lower percentage in order to ensure that the provisions of this section and the scheme or device provisions in section 1001B are not circumvented.

Subsection (b) of section 1104(b) amends section 1001A(a)(3) to provide that each entity or individual receiving 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 of section 1001(A)(a). Each such entity or individual receiving payments shall provide to the Secretary, 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. Payments are tracked by means of social security and taxpayer identification numbers.

The *Senate Amendment* extends current payment limitation provisions through 2002.

The *Conference Report* adopts the *Senate* provision with an amendment to reduce the maximum production flexibility payment per person for any fiscal year to $40,000. (Production flexibility payments take the place of deficiency payments in the *Conference Substitute.*)

The Managers expect the Secretary to utilize significant latitude and flexibility in defining and enforcing the "bona fide and substantive" change provisions of the regulations, particularly in the initial years of this new farm legislation. The Managers intend that the Secretary shall continue to use existing regulations in defining the term "person".

It is the intent of the Conferees that persons who are tenants and sharecroppers and actively engaged in farming shall be eligible for payments under Sec 1103. In effect, any farm now eligible for deficiency payments can qualify for payments under Sec. 1103, if it participated in one of the 1991-95 commodity programs.

Notwithstanding the foregoing, Sec. 1105 payment limitations shall apply to any person determined to be eligible for contract payments.

PEANUT PROGRAM (H. 1301, S. 1113, CR. 1106)

The *House Bill* amends—

(1) section 108 B of the Agricultural Act of 1949 by setting the quota support rate at $610 for the 1996 through 2002 crops, eliminating the price support escalator, reducing the support rate by 15% to any producer who sells peanuts to the government rather than a commercial buyer if the price is equal to greater than the support price. Reform of cross compliance procedures are achieved by segregating quota pool losses from additional pool losses and by increasing the assessment if quota pool losses remain; and

(2) section 358–1 of the Agricultural Adjustment Act of 1938 by requiring reduction of quota from municipalities, airport authorities, schools, colleges, refuges and other public entities; non-resident quota holders who are not producers; and resident quota holders who are not producers; eliminating the quota minimum; allowing spring and fall sale, transfer, lease of quota across county lines; eliminating undermarketings; limiting disaster transfer payments to no more than 70% of quota support rate not to exceed 25% of total quota pounds; and by granting a temporary quota allocation to all growers equal to seed purchases.

The *Senate Amendment—*

(1) amends section 108B of the Agricultural Act of 1949 by reauthorizing the program through 2000 and by reducing the price support rate for quota peanuts to $628 per ton for the 1996 through 2000 crops (the price escalator is eliminated);

(2) amends section 358–1 of the Agricultural Adjustment Act of 1938 by reauthorizing the section through 2000; by

eliminating the poundage quota minimum; by setting the national poundage quota at a level equal to the quantity of peanuts that the Secretary estimates will be devoted in each marketing year to domestic edible and related uses, excluding peanuts used for seed on a farm, and including any stocks of peanuts on hand in the inventory of the Commodity Credit Corporation and peanuts or products of peanuts imported into the United States; by eliminating undermarketings of peanuts for the purpose of calculating quota; by establishing a temporary quota for peanuts used for seed; and

(3) amends section 358b (lease and transfer) of the Agriculture Adjustment Act of 1938 by reauthorizing the section through 2000 and allows limited sale or lease of quota across county lines.

The *Conference Substitute* adopts the *House* position to—

(1) amend section 108b Agricultural Act of 1949 to authorize the quota price support program through 2002 at $610 per ton and eliminate the price support escalator;

(2) amend section 358–1 of the Agriculture Adjustment Act of 1938 to eliminate the 1.35 million ton quota poundage floor and undermarketings;

(3) amend section 358–1 to segregate quota pool losses from additional pools and to increase assessments to cover losses if any quota pool losses remain;

(4) amend section 358–1 to establish a temporary quota for seed; and

(5) amend section 358–1(b) to limit the transfer of additional peanuts as a result of natural disaster to 25% of quota pounds at not more than 70% of the quota support rate.

The Managers agreed to include additional reforms from the *House* bill that: (1) would prioritize quota reduction to farms controlled by public entities and out-of-state quota holders who are not producers; (2) allow full lease, sale and transfer of quota within a state; and (3) reduce the support rate by 5% to any producer who sells peanuts to the government rather than a commercial buyer if the price is equal to or greater than support price. However, these critical reforms were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

SUGAR PROGRAM (H. 1302, S. 1108, CR. 1107)

The *House Bill* amends—

(1) section 206 of the Agricultural Act of 1949 by maintaining sugarbeet and sugarcane loan rates at 1995 levels (18/22.9). Reduces the loan rates commensurate to reduction of subsidies by the European Union and other major sugar producing countries, establishes a loan modification threshold, which triggers the non-recourse loan system, at 1.256 million short tons in FY 1996 and FY 1997. The threshold increases 3% each year. Increases current marketing assessment for cane sugar from 1.1% to 1.5% of the loan rate per pound and from 1.1794% to 1.6083% of the loan rate for beet sugar;

(2) section 359b. of the Agricultural Adjustment Act of 1938 by eliminating marketing allotments.

The *Senate Amendment* amends section 206 of the Agricultural Act of 1949 to—

(1) reauthorize the program through 2002;

(2) provide for a recourse loan that becomes a nonrecourse loan when the tariff rate quota for imported sugar is set to equal or exceed 1.34 million short tons;

(3) increase the marketing assessment for cane sugar to 1.375 percent of the support price beginning in FY 1997;

(4) increase the marketing assessment for beet sugar to 1.47425 percent of the support price beginning in FY 1997;

(5) extend the marketing assessment provision through FY 2002; and

(6) impose a $0.01 per pound penalty on all sugar forfeited under loan.

Sugar Marketing allotments in section 359 of the Agricultural Adjustment Act of 1938 are repealed.

The *Conference Substitute* adopts the *House* approach to amend section 206 of the Agriculture Act of 1949 to set the sugar cane loan rate at $0.18 per pound, the sugar beet loan rate at $0.229 per pound and reauthorize the program through 2002. The *Conference Substitute* adopts the Senate approach and to provide nonrecourse loans when the tariff rate quota for imports is set greater than or equal to 1.5 million short tons, raw value. Loans are recourse if the TRQ is set below this amount.

The *Conference Substitute* adopts the *Senate* provision to make 9-month loans and to impose a $0.01 per pound penalty on all sugar forfeited under loan. The *Conference Substitute* adopts the *Senate* provision to increase the marketing assessments on sugar cane and sugar beets to 1.375 and 1.47425 percent respectively, beginning in FY 1997.

Sugar Marketing allotments in section 359 of the Agricultural Adjustment Act of 1938 are repealed.

The Managers agreed to include additional important reforms in the *Conference Substitute* that would reduce the support rate for sugar if European Union domestic sugar subsidies are reduced. However, these critical reforms were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

REPEAL OF PERMANENT PRICE SUPPORT AUTHORITY AND MISCELLANEOUS AUTHORITIES (H. 1105, S. 1101, CR. 1109)

The *House Bill* suspends quotas, allotments, parity-based price supports and other outdated permanent law from the Agriculture Adjustment Act of 1938 and the Agricultural Act of 1949 from FY 1996-2002.

The *Senate Amendment* would repeal these provisions of permanent law from the from the Agriculture Adjustment Act of 1938 and the Agricultural Act of 1949.

The *Conference Substitute* adopts the *Senate* provision with modifications. As amended, the Agricultural Act of 1949 is repealed entirely, while certain necessary sections are transferred to the Agricultural Act of 1938. As part of the total repeal of the Agricultural Act of 1949, the production flexibility contracts, loan programs, peanut, and sugar programs for the 1996 through 2002 crops have been established under a new act, the "Agricultural Market Transition Act."

FARMER OWNED RESERVE (H.1404, S.1101, CR.1109)

The *House Bill* repeals the Farmer Owned Reserve Program authorized by section 110 of the Agricultural Act of 1949.

The *Senate Amendment* contains an identical provision.

The *Conference Substitute* maintains this provision.

EMERGENCY LIVESTOCK FEED PROGRAM (H.1401, S.1101, CR.1109)

The *House Bill* amends section 609 of the Emergency Livestock Feed Assistance Act of 1988 to provide that no person may receive benefits attributable to lost production of a feed commodity if catastrophic insurance protection or noninsured crop disaster assistance is available to the person under the Federal Crop Insurance Act.

The *Senate Amendment* repeals Title VI, the Emergency Livestock Feed Assistance Act of 1988, of the Agricultural Act of 1949.

The *Conference Substitute* adopts the *Senate* provision.

HONEY PROGRAM (H. , S.1101, CR.1109)

The *House Bill* contains no similar provision.

The *Senate Amendment* repeals Sec. 207 of the Agricultural Act of 1949, the Honey Program.

The *Conference Substitute* adopts the *Senate* provision.

SUBTITLE B—CONSERVATION

LIVESTOCK ENVIRONMENTAL ASSISTANCE PROGRAM (H. , S.1201, CR.1201(a))

The *House Bill* contains no similar provision.

The *Senate Amendment* replaces chapter 2 of subtitle D of title XII of the Food Security Act of 1985 with an Environmental Quality Incentives Program that would combine the functions of the Agricultural Conservation Program, the Water Quality Incentives Program, the Great Plains Conservation Program and the Colorado River Basin Salinity Control Program into a single initiative to provide technical assistance and cost-share and incentive payments to crop and livestock producers who undertake certain conservation practices. The program would receive $100,000,000 in annual mandatory funding directed for practices relating to livestock production.

The *Conference Substitute* adopts the *Senate* provision with an amendment that adds a new chapter 4 establishing a mandatory Livestock Environmental Assistance Program funded at $100,000,000 annually through the Commodity Credit Corporation, to be used for structural and land management practices to protect water, soil and related resources from degradation associated with livestock production. References to assistance primarily for crop production and to the four discretionary programs cited in the Senate amendment are eliminated and species thresholds in the Senate amendment for determining structural practice eligibility are increased for beef cattle and swine and lowered for dairy cattle.

In determining the practice or combination of practices appropriate for a particular farm or ranch, the Managers emphasize that the Secretary should use the lowest-cost option or options available. By doing so, the Secretary will be able to assist the greatest number of producers possible and maximize the positive impacts on the environment.

The legislation does not specifically mention all structural or land management practices that are eligible for funding under LEAP because of the broad gamut of measures that may be appropriate depending on the type of operation, its location and other factors. In addition, it is impossible to predict the evolution of new technologies. Accordingly, the Managers strongly urge the Secretary to make new practices eligible for funding under LEAP as soon as reasonable testing indicates their efficacy. The Managers also intend that the term "site-specific" refer not only to whole farms or ranches but to discrete locations within an operation.

The Managers urge the Department to minimize the formal planning that may be necessary to develop LEAP contracts. The Department should, however, take into account the practices contained in other plans the producer may have for commodity program eligibility or for receipt of other conservation assistance. Because of the multi-year nature of the contracts, the Managers suggest that the Department consider the planning process for the Great Plains Conservation Program in developing a similar process for LEAP.

The Managers believe that voluntary natural resource management plans developed by the producer and the Department (or third parties designated by the Secretary) should be sufficient for the LEAP planning process. Such plans should be confidential, address resource challenges as requested by the producer, and sufficiently flexible to permit innovation. However, the Committee emphasizes that such a voluntary natural resource management plan should not be a prerequisite for receiving assistance under LEAP, nor should it confer preference among producers requesting financial assistance.

CONSERVATION RESERVE PROGRAM (H.1402, S.1201, CR.1201)

The *House Bill* amends provisions of the Conservation Reserve Program established under subchapter B, Chapter 1, of Subtitle D of the Food Security Act of 1985 by:

(1) limiting the total number of acres authorized to be enrolled in the Conservation Reserve Program to 36,400,000 acres;

(2) limiting rental rates for contract extensions or new contracts covering land that was previously enrolled in the conservation reserve program to no more than 75 percent of the annual rental payment under the previous contract;

(3) providing authority for an owner or operator of land enrolled under a conservation reserve contract to terminate the contract upon written notice to the Secretary; and

(4) striking the proviso relating to the enrollment of new acres beginning in calendar year 1997 in section 727 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996.

The *Senate Amendment* reauthorizes the CRP through 2002 and specifies annual funding levels for the program that reflect a limit on the size of the CRP at the current level of 36.4 million acres and an additional reduction in expenditures of approximately $20 million per year.

The 1996–2002 direct spending for the Conservation Reserve (including contracts extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624;) may not exceed—

(1) $1,787,000,000 for fiscal year 1996;
(2) $1,784,000,000 for fiscal year 1997;
(3) $1,445,000,000 for fiscal year 1998;
(4) $1,246,000,000 for fiscal year 1999;
(5) $1,101,000,000 for fiscal year 2000;
(6) $999,000,000 for fiscal year 2001; and
(7) $974,000,000 for fiscal year 2002.

The *Conference Substitute* adopts the *House* provision with an amendment removing the maximum rate for contract renewals, and changing the proviso with respect to new enrollments so that it is applicable notwithstanding any other provision of law.

The Managers also adopted the *House* amendment to section 1235 of the Food Security Act of 1985 to provide that an owner or operator of land enrolled under a conservation reserve contract may terminate the contract upon 60 days' written notice to the Secretary. Owners or operators who voluntarily terminate a contract within the first three years of its term must reimburse the Secretary for any cost-share payments received under the contract.

WETLANDS RESERVE PROGRAM (H. , S.1201, CR.1201)

The *House Bill* contains no similar provision.

The *Senate Amendment* reauthorizes the program through 2002 and reduces outlays by setting a maximum enrollment level of 975,000 acres and by eliminating authority for the Secretary to enter into permanent easements.

The *Conference Substitute* adopts the *Senate* provision with an amendment striking the reauthorization and setting the maximum easement period at 15 years.

SUBTITLE C—AGRICULTURAL PROMOTION AND EXPORT PROGRAMS

MARKET PROMOTION PROGRAM (MPP)(H , S.1301, CR.1301)

The *House Bill* contains no similar provision.

The *Senate Amendment* reduces, effective October, 1995, funding for the MPP to not more than $75 million for each of FY 1996–2002.

The *Conference Substitute* adopts the *Senate* provision with an amendment to fund MPP at not more than $100 million for each of FY 1996–2002.

EXPORT ENHANCEMENT PROGRAM (H.1405, S.1302, CR.1302)

The *House Bill* amends section 301(e)(1) of the Agricultural Trade Act of 1978 to limit the amount of the CCC funds or commodities available for the Export Enhancement Program as follows: $400,000,000 for fiscal years 1996 and 1997; $500,000,000 for fiscal year 1998; $550,000,000 for fiscal year 1999; $579,000,000 for fiscal year 2000; and $478,000,000 for fiscal years 2001 and 2002.

The *Senate Amendment* reduces, effective October 1, 1995, funding for the EEP for FY 1996–2002 by 20% each year from the maximum allowed by the Uruguay Round Agreement of GATT. Spending levels under section 301(e)(1) of the Agricultural Trade Act of 1978 available for the Export Enhancement Program are as follows: $767,200,000 for fiscal year 1996; $705,600,000 for fiscal year 1997; $624,800,000 for fiscal year 1998; $544,000,000 for fiscal year 1999; $463,200,000 for fiscal year 2000; and $382,400,000 for fiscal years 2001 and 2002.

The *Conference Substitute* adopts the *House* provision with an amendment to limit the amount of the CCC funds or commodities available for the Export Enhancement Program as follows: $350,000,000 for fiscal years 1996 and 1997; $500,000,000 for fiscal year 1998; $550,000,000 for fiscal year 1999; $579,000,000 for fiscal year 2000; and $478,000,000 for fiscal years 2001 and 2002.

The Managers recognize the Uruguay Round Agreement on GATT did not eliminate the use of export subsidies. As a result, U.S. agriculture is still faced with subsidized foreign competition. To help U.S. agriculture counter such subsidized competition, capitalize on potential new market opportunities, and maintain and expand existing export markets, the Managers expect the Secretary of Agriculture to fully utilize and aggressively implement the export programs authorized in this Act or any other Act.

SUNFLOWER OIL ASSISTANCE PROGRAM/COTTONSEED OIL ASSISTANCE PROGRAM (H. , S.1303, CR.)

The *House Bill* amends section 301 of the Disaster Assistance Act of 1988 and section 420 of the Agricultural Act of 1949 by removing obsolete authority of the Secretary to support the price of cottonseed and cottonseed products through loans, purchases, export assistance, or any other form of assistance.

The *Senate Amendment* repeals, effective October, 1995, section 301 of the Disaster Assistance Act of 1988. This would eliminate authority for the Secretary of Agriculture to utilize section 32 funds to promote the export of sunflowerseed oil, cottonseed oil or any other export promotion activities. Both vegetable oils would continue to be eligible for assistance under the Export Enhancement Program.

The *Conference Substitute* deletes both provisions.

SUBTITLE D—MISCELLANEOUS

CATASTROPHIC CROP INSURANCE COVERAGE (H. 1403, S. 1114, CR. 1401)

The *House Bill* repeals, beginning with spring-planted 1996 crops, the requirement that producers purchase catastrophic crop insurance in order to receive payments, conservation benefits and farm loans from the Consolidated Farm Services Agency. It requires producers who do not purchase the insurance to waive their right to receive any emergency crop loss assistance. The bill also establishes the Office of Risk Management as an agency separate from the Consolidated Farm Services Agency, ends the dual delivery of Federal crop insurance by prohibiting sales through CFSA offices, and creates a business interruption insurance program under which a producer can receive an indemnity payment if the producer suffers a loss of income.

The *Senate Bill* contains a similar repeal of the linkage between catastrophic coverage and program benefits, but begins the repeal with 1997 crops, and contains no waiver requirement. The Senate Amendment contains no provision with respect to other items in the House bill.

The *Conference Substitute* adopts the *House* provision with respect to de-linking catastrophic coverage from program benefits in 1996. The *Conference Substitute* adopts the *House* provision with respect to dual delivery, with an amendment that will require a more gradual phaseout of dual delivery in states where crop insurance is not widely offered by private companies. The *Conference Substitute* amends Sec. 519(1)(2)(B) of the Federal Crop Insurance Act to include seed crops.

The *Conference Substitute* would eliminate the sale of catastrophic risk protection through local county offices of the Department of Agriculture effective with the Spring-planted 1996 crops. The Secretary is required to transfer all existing catastrophic risk protection policies written by local offices of the Department to approved insurance providers.

However, the Managers did provide for a mechanism under which the Secretary could continue to offer catastrophic risk protection covered through local offices of the Department if, after full consultation and cooperation with approved insurance providers, the Secretary determines that there are not sufficient numbers of approved insurance providers operating in a State, or part of a State, to adequately provide catastrophic risk protection coverage to producers. It is not the intent of the Managers that the Secretary exercise this discretion casually. He should carefully evaluate the availability of private providers and consult fully with the private industry before making a determination that it is necessary for the Department to continue to offer catastrophic risk protection in a particular State, or part of a State.

AGRICULTURE QUARANTINE AND INSPECTION (H. , S. , CR. 1402)

The *House Bill* contains no similar provision.

The *Senate* Amendment contains no similar provision.

The Managers agreed to amend section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990 to authorize the Secretary of Agriculture to collect fees to cover the cost of providing quarantine and inspection services for imports. As amended, this section allows the Secretary to utilize fees collected beyond $100 million.

COMMODITY CREDIT CORPORATION INTEREST RATES (H. , S. 1112, CR. 1403)

The *House Bill* contains no similar provision.

The *Senate Amendment* increases the Commodity Credit Corporation interest rate applicable to agriculture commodity loans by 100 basis points.

The *Conference Substitute* adopts the Senate provision.

AGRICULTURE COMPETITIVENESS INITIATIVE (H. , S. 1106E, CR.)

The *House Bill* contains no similar provision.

The *Senate Amendment* amends Sec. 1502 of the Agricultural Act of 1949 to establish competitive agriculture research grants.

The *Conference Substitute* deletes the *Senate* provision.

EVALUATION OF RICE INDUSTRY (H. , S. , CR. 1106(D))

The *House Bill* contains no similar provision.

The *Senate Bill* contains no similar provision.

The Managers agreed to include in the *Conference Substitute* provision to direct the Secretary of Agriculture, if he found that the rice industry is threatened by underplantings resulting form the requirements of this subtitle, to take such actions as necessary to strengthen the export and domestic consumption of rice and rice producers income. It is the intent of the Managers that the Secretary should use all tools available to him in order to maintain the domestic rice industry, including, but not limited to EEP, PL480, MPP, FMD, recommendations under section 301, and other programs to enhance market development efforts and allow producers to obtain their income from the marketplace. However, the provision was subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

BALANCED BUDGET ACT EXEMPTION (H. 1102 (L), S. , CR.)

The *House Bill* amends Sec. 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 to provide an exemption for market transition payments in the 'Freedom to Farm' program.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provision in the *Conference Substitute*, However, these provisions were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

SENSE OF THE SENATE REGARDING ETHANOL (H. , S. 1116, CR.)

The *House Bill* contains no similar provision.

The *Senate Amendment* expresses the Sense of the Senate in support of the use of ethanol as an alternative fuel.

The Managers agreed to include the *Senate* provision in the *Conference Substitute.* However, these provisions were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

COMMISSION ON THE 21ST CENTURY PRODUCTION AGRICULTURE (H. SUBTITLE E., S. , CR.)

The *House Bill* establishes a commission known as the "Commission on 21st Century Agriculture".

Membership is composed of 11 members (3 appointed by the President and 4 each by the Chairmen of the House and Senate Agriculture Committees), with qualifications of persons involved in agriculture production and related industries.

The Commission is directed to conduct a review of how the Freedom to Farm Act has performed during the period of operation (a "Look Back") and a review of the future of production agriculture in the United States and the role of Federal Government support of production agriculture (a "Look Forward"). The Commission is to submit a mid-term report (June 1, 1998) on a final report by January 1, 2001.

The Subtitle authorizes the Commission to conduct hearings, obtain support and information from other Federal Government agencies, employ a staff and otherwise carry out its duties.

The Committee is to terminate upon the issuance of the report required by January 1, 2001.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provision in the *Conference Substitute*. However, these provisions were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

DELETED PROVISIONS—DAIRY

MILK PRICE SUPPORT PROGRAM (H. 1201, S. 1106 CR.)

The *House Bill* amends the Agricultural Act of 1949 by replacing section 204, and conforming sections 201(a) and 301, to authorize the Secretary to enter into market transition contracts with milk producers following the elimination of the dairy price support program.

The dairy price support program under existing section 204 of the Agricultural Act of 1949 continues in operation through December 31, 1995 at which time it is terminated. Producers that are entitled to a refund of their 1995 budget reconciliation assessment (i.e., their marketings of milk in calendar year 1995 did not exceed their marketings of milk in calendar year 1994) will receive those refunds from CCC funds rather than from assessments on producers in 1996.

Sections 201(a) and 301 of the Agricultural Act of 1949 are conformed to eliminate milk from the designated and undesignated nonbasic agricultural commodities for which the Secretary has general authority to provide price support.

The *Senate Amendment* amends the Agricultural Act of 1949 by replacing section 204 to operate a price support program for milk during the period beginning January 1, 1996, and ending December 31, 2002, and set the support price for milk used for cheese at $10.00 per hundredweight for calendar year 1996. The support price for milk used to make cheese shall decrease 10 cents per hundredweight each calendar year from 1997 through 2002.

The Secretary is required to decrease the support price of milk used for cheese for an upcoming calendar year by an additional 25 cents per hundredweight if, on November 20 of the preceding calendar year, the Secretary estimates that CCC purchases of cheese and DEIP sales of dairy products will exceed 1.5 billion pounds (milk equivalent, total solids basis) during the upcoming calendar year. Any such additional decrease in the support price shall be applicable only for the calendar year for which the Secretary made the estimate.

The *Conference Substitute* deletes both the *House* and *Senate* provisions.

RECOURSE LOANS FOR COMMERCIAL PROCESSORS OF DAIRY PRODUCTS (H. 1202, S. , CR.)

The *House Bill* amends the Agricultural Act of 1949 to authorize the Secretary to make recourse loans available to commercial processors of cheddar cheese, butter and nonfat dry milk dairy products at 90% of the reference price for a product and at established CCC interest rates to assist those processors in assuring price stability for the dairy industry.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

DAIRY EXPORT INCENTIVE PROGRAM (H. 1211. S. , CR.)

The *House Bill* amends section 153(c) of the Food Security Act of 1985 to require the Secretary to use the DEIP program to export the maximum allowable quantities of U.S. dairy products consistent with the obligations of the United States as a member of the World Trade Organization, minus the quantity sold under section 1163 of the Food Security Act of 1985 during that year. The *House Bill* also extends the operations of the DEIP program through the year 2002.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

AUTHORITY TO ASSIST IN ESTABLISHMENT AND MAINTENANCE OF EXPORT TRADING COMPANY (H. 1212, S. , CR.)

The *House Bill* authorizes the Secretary of Agriculture to assist the United States dairy industry in establishing and maintaining an export trading company under the Export Trading Company Act of 1982 to facilitate the international market development for and exportation of U.S. dairy products.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

STANDBY AUTHORITY TO INDICATE ENTITY BEST SUITED TO PROVIDE INTERNATIONAL MARKET DEVELOPMENT AND EXPORT SERVICES (H. 1213, S. , CR.)

The *House Bill* provides standby authority for the Secretary of Agriculture to indicate which entity, autonomous of the U.S. government, is best suited to provide international market development and export services to the U.S. dairy industry and to assist that entity in identifying sources of funding for its activities during the period between July 1, 1997 and September 30, 2000.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

STUDY AND REPORT REGARDING POTENTIAL IMPACT OF URUGUAY ROUND ON PRICES, INCOME AND GOVERNMENT PURCHASES (H. , S. , CR.)

The *House Bill* directs the Secretary of Agriculture to perform a study of the potential impact of new access cheese imports under the Uruguay Round on U.S. milk prices, dairy producer income, and the cost of Federal dairy programs.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

RESEARCH AND PROMOTION ACTIVITIES UNDER FLUID MILK PROMOTION ACT OF 1990 (H. 1221, S. , CR.)

The *House Bill* amends the Fluid Milk Promotion Act of 1990 (subtitle H of title XIX of Public Law 101–624) to eliminate the automatic termination of any order issued under the Act on December 31, 1996, and to clarify the referendum requirements of the Fluid Milk Promotion Act which were inadvertently impacted by amendments made to the Act in 1993 which altered the definition of "fluid milk processor". Any future order issued under the Act must now be approved by the affirmative votes of fluid milk processors representing 60 percent or more of the volume of fluid milk products marketed by all fluid milk processors voting in the referendum before it can be implemented.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

EXPANSION OF DAIRY PROMOTION PROGRAM TO COVER DAIRY PRODUCTS IMPORTED INTO THE UNITED STATES (H. 1222, S. , CR.)

The *House Bill* amends the Dairy Production Stabilization Act of 1983 to extend the assessment for generic research and promotion on U.S. dairy producers to imported dairy products.

Importers of dairy products will be entitled to the same credit for contributions to State or regional promotion or nutrition programs to which domestic producers are entitled.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

PROMOTION OF UNITED STATES DAIRY PRODUCTS IN INTERNATIONAL MARKETS THROUGH DAIRY PROMOTION PROGRAM (H. 1223, S. , CR.)

The *House Bill* amends section 113(e) of the Dairy Production Stabilization Act of 1983 to require that the budget of the National Dairy Promotion and Research Board during each of the fiscal years from 1996 and 2000 shall provide for the expenditure of not less than 10 percent of anticipated revenues available to the Board on the development of international markets for, and the promotion within such markets of, U.S. dairy products.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

ISSUANCE OF AMENDMENT ORDER UNDER DAIRY PRODUCTION STABILIZATION ACT OF 1983 (H. 1224, S. , CR.)

The *House Bill* establishes an expedited procedure to implement the amendments required by sections 1222 and 1223 to the dairy products promotion and research order issued under the Dairy Production Stabilization Act of 1983.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

PROGRAM TO VERIFY MILK RECEIPTS (H. 1231, S. , CR.)

The *House Bill* creates a new subsection (*l*) in section 204 of the Agricultural Act of 1949 to establish a program to verify receipts of milk and audit marketing agreements and other contracts for the marketing and receipt of milk between producers and handlers.

Effective July 1, 1996, the verification program shall supersede any Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 with respect to milk or the products of milk.

The *Senate Amendment* contains no similar provision

The *Conference Substitute* deletes the *House* provision.

FEDERAL MILK MARKETING ORDERS (H. 1232, S. 1106, CR.)

The *House Bill* provides that the verification program established by section 1231 will supersede existing Federal milk marketing orders. The *House Bill* also terminates existing Federal milk marketing orders by striking paragraphs (5) and (18) of section 8c and provides that the amendments made by section 1232 are effective on July 1, 1996.

The *Senate Amendment* amends section 8c(5) of the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 to classify butter and dry milk as Class IV dairy products. It also establishes a Class IV pool for all milk producers to share the difference, if any between the support price for cheese and the national average price for butter and dry milk, expressed in dollars per hundredweights of milk, each month. The cost of administering the Class IV pool is shared by all producers. Persons who fail to pay into the pool are liable for a civil penalty. The Secretary is to issue regulations without regard to the Administrative Producers Act.

The *Conference Substitute* deletes both the *House* and *Senate* provisions.

NORTHEAST COMPACT (H. , S. 1106, CR.)

The *House Bill* contains no similar provision.

The *Senate Amendment* provides congressional consent for the Northeast Interstate Dairy Compact for a period of seven years. The Compact Commission is required to compensate the CCC for the cost of any cheese purchased from within the Compact region resulting from increased fluid milk production within Compact region to the extent that such purchases exceed the national average rate of purchases of cheese by the CCC.

The *Conference Substitute* deletes the *Senate* provision.

EXTENSION OF TRANSFER AUTHORITY REGARDING MILITARY AND VETERANS HOSPITALS (H. 1241, S. , CR.)

The *House Bill* gives the authority of the Secretary to transfer dairy commodities to military and veterans hospitals is extended through 2002.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

EXTENSION OF DAIRY INDEMNITY PROGRAM (H. 1242, S. , CR.)

The *House Bill* extends the Dairy Indemnity Program until 2002.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

EXTENSION OF REPORT REGARDING EXPORT SALES OF DAIRY PRODUCTS (H. 1243, S. , CR.)

The *House Bill* requires that the Secretary report on export sales of dairy products is extended through 2002.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

STATUS OF PRODUCER-HANDLERS (H. 1244, S. , CR.)

The *House Bill* states that the legal status of producer-handlers is not altered or otherwise affected by the provisions of this subtitle.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

REPEAL OF SECTION 102 1990 FARM BILL (H. , S. 1106, CR.)

The *House Bill* contains no similar provision.

The *Senate Amendment* repeals section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990 which prohibits states from having higher "make allowances" than that permitted under the federal price support program for milk.

The *Conference Substitute* deletes the *Senate* provision.

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

SUBTITLE A—FINANCIAL INSTITUTIONS

SECTION 2011—SPECIAL ASSESSMENT TO CAPITALIZE SAIF

House bill

The House bill would fully capitalize the Savings Association Insurance Fund (SAIF) to its designated reserve ratio with a one-time special assessment on all SAIF-insured deposits, including those held by SAIF members and those banks which have purchased SAIF deposits, or so-called "Oakar" banks. The Federal Deposit Insurance Corporation (FDIC) will determine the size of the special assessment based on the SAIF reserve balance and the most recently available data on insured deposits. The assessment, anticipated to be between seventy to eighty cents per every $100 of deposits, will be applied against the SAIF deposits held by institutions as of March 31, 1995. The Federal Deposit Insurance Corporation (FDIC) will collect the special assessment on the first business day of January 1996, or such other date as the FDIC prescribes which may not be later than 60 days after the date of enactment.

The bill would provide the FDIC Board of Directors authority to exempt weak institutions from paying the special assessment if the exemption would reduce risk to the SAIF. Institutions exempt from the special assessment would pay regular assessments under the risk-based assessment schedule in effect for SAIF members on June 30, 1995 for the period 1996–1999. Institutions exempt from the special assessment have the option—during the period 1997–1999—of paying a pro rated portion of the special assessment. Such institutions would then pay on the same risk-based schedule as non-exempted SAIF members.

FDIC would also have authority to set the special assessment for Oakar banks at a lower rate than for SAIF members so long as such rate is not less than two-thirds of the rate set for SAIF members and would not result in an increased budget outlay or decrease in offsetting receipts.

Senate amendment

The Senate language is similar to the House bill on the timing and calculation of the special assessments. However, for purposes of determining the special assessment for Oakar banks, the Senate adopted language would provide those Oakar banks which hold a majority of BIF-insured deposits as of June 30, 1995 with a ten percent reduction in their SAIF assessable deposits. The exemption for weak institutions is also extended to include certain newly chartered savings associations.

Conference agreement

The conference agreement provides that the SAIF will be fully capitalized on January 1, 1996, as required under both House and Senate language. The House receded to the Senate on the treatment of Oakar banks with a modification that a twenty percent reduction be made in their SAIF-assessable deposits.

The conferees took these actions to improve SAIF's undercapitalized position. At present, SAIF reserves would not cover the cost of the failure of one large or a few medium-sized thrifts, or other substantial unanticipated losses. Should the reserves be exhausted, the taxpayer is next in line. The full and immediate capitalization of SAIF will decrease taxpayer risk significantly and ensure that thrifts make a significant contribution in stabilizing their insurance fund.

The Conference Committee recognizes the importance of recapitalizing SAIF and maintaining public confidence in federal deposit insurance. The legislative imposition of a one-time, special assessment on SAIF-insured institutions is a highly unusual and infrequent event intended to stabilize the SAIF.

SECTION 2012—FINANCING CORPORATION ASSESSMENT SHARED PROPORTIONALLY BY ALL INSURED DEPOSITORY INSTITUTIONS

House bill

Under the House bill, effective January 1, 1996, the assessment base for payments on the interest on obligations issued by the Financing Corporation (FICO) is to be expanded to include all FDIC-insured institutions, *i.e.*, banks and thrifts (thus spreading the FICO obligation pro rata over all FDIC-insured institutions).

Senate amendment

The Senate language is identical.

Conference agreement

The conference agreement includes this language. Spreading the FICO burden will eliminate the potential for a premium differential, thereby decreasing thrifts' incentives to evade SAIF assessments.

SECTION 2013—MERGER OF BIF AND SAIF

House bill

The House provision would merge the Bank Insurance Fund (BIF) and the SAIF into the Deposit Insurance Fund on January 1, 1998. The exit moratorium, which currently prohibits institutions from switching insurance funds and the Oakar bank provisions, would be repealed on January 1, 1998.

The provision would also establish a special reserve for the Deposit Insurance Fund. The special reserve would consist of any SAIF excess reserves, i.e., reserves not needed to meet the designated reserve ratio, immediately prior to the merger of the funds. The FDIC would have the authority to transfer amounts from the special reserve to the deposit insurance fund if the Board of Directors determines that the fund's reserve ratio is less than half of the designated reserve ratio and is likely to be, remain at or below that level for the next four quarters.

Because of the merger of the funds, the House bill would also modify the Federal Home Loan Bank System's annual contribution of $300 million toward the interest payments due on Resolution Funding Corporation (REFCORP) bonds. The provision would eliminate the shortfall allocation formula by changing the payment to 23.7% of the system's net earnings, as compared to the flat $300 million payment provided for under current law.

The House bill would also repeal the Home Owners' Loan Act, which provides for the chartering of federal savings associations and regulation of savings and loan holding companies. The Office of Thrift Supervision (OTS) would also be abolished. State chartered thrifts would be treated as if they were commercial banks for the purposes of all federal banking laws, including the Federal Deposit Insurance Act and the Federal Reserve Act. A number of technical provisions are included to implement the charter conversion, including a clarification that housing creditors may purchase and enforce alternative mortgage transactions in accordance with OTS regulations issued prior to the effective date of Section 3(f) of the Home Owners Loan Act (HOLA).

Senate amendment

With regard to the merger of the funds, the Senate language differs in that the BIF and the SAIF would be merged on January 1, 1998 only if no insured depository institution is a savings association (as those terms are defined in the Federal Deposit Insurance Act) on that date. The Senate language does not repeal the HOLA or abolish the OTS. The Senate language also maintains the present REFCORP formula.

Conference agreement

The House recedes.

SECTION 2014—CREATION OF SAIF SPECIAL RESERVE

House bill

No provision.

Senate amendment

No provision.

Conference agreement

Analogous to the treatment of the merged insurance funds under Section 2013, the conference agreement includes language establishing a special reserve for the SAIF on January 1, 1998. The SAIF special reserve will initially consist of the amount that SAIF's reserve ratio exceeds the designated reserve ratio. As with the Deposit Insurance Fund under Section 2013, the FDIC may transfer amounts from the special reserve to the Deposit Insurance Fund if the Board of Directors determines that the fund's reserve ratio is less than half of the designated reserve ratio and is likely to be less than half of the designated reserve ratio for the next four quarters.

SECTION 2015—REFUND OF AMOUNTS IN DEPOSIT INSURANCE FUND IN EXCESS OF DESIGNATED RESERVE AMOUNT

House bill

The House bill would prohibit the FDIC from setting semiannual assessments in excess of the amount needed to maintain the reserve ratio of any fund at the designated reserve ratio. Further, the FDIC would be required to rebate at the end of any semiannual period any amount—in the BIF or in the merged fund after January 1, 1998—that exceeds the balance required to meet the designated reserve ratio on such basis as the Board of Directors determines to be appropriate. The Board will take into account the factors considered under the risk-based assessment system. The rebate to any member could not exceed the total amount paid by such member for that semiannual period.

Senate amendment

The Senate amendment would provide the FDIC with the discretion to rebate in the form of assessment credits the assessments paid by BIF members to the extent that the fund's reserve ratio exceeds the designated reserve ratio. FDIC would make this judgment after considering operating costs, case resolution cost, case resolution expenditures, and income.

Conference agreement

The Senate recedes, with an amendment which would exempt from the House provision those institutions that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or are not well-capitalized. Assessments paid by these institutions cannot be rebated. This preserves the FDIC's flexibility to continue and refine the risk-based premium system required by the Federal Deposit Insurance Corporation Improvement Act of 1991.

SECTION 2016—ASSESSMENT RATES FOR SAIF MEMBERS MAY NOT BE LESS THAN ASSESSMENT RATES FOR BIF MEMBERS

House bill

The House bill would require that SAIF assessment rates could not be lower than BIF assessment rates.

Senate amendment

The Senate language is similar but would extend the requirement until all FICO obligations are paid.

Conference agreement

The conference agreement provides that SAIF assessment rates may not be lower than BIF assessment rates beginning on the date of enactment of the reconciliation act and ending on January 1, 1998.

SECTION 2017—ASSESSMENTS AUTHORIZED ONLY IF NEEDED TO MAINTAIN THE RESERVE RATIO OF A DEPOSIT INSURANCE FUND

House bill

The House bill would prohibit the FDIC from setting semiannual assessments in excess of the amount needed to maintain the reserve ratio of any fund at the designated reserve ratio, or, if the reserve ratio is less than the designated reserve ratio, to increase the ratio to the target level.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an exception. Subsection (c) of Section 2017 provides an exception to the limitations placed on the FDIC in setting semi-annual assessments when the fund is at or above the designated reserve ratio. This subsection permits the FDIC to continue to charge premiums under its risk-based system on institutions that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or are not well-capitalized. These standards are generally the ones used by the FDIC in its current risk-based system. This exception is intended to provide the FDIC with sufficient flexibility to maintain a risk-based assessment system and thereby provide the owners and managers of financial institutions with an incentive to manage their institutions so as to reduce or eliminate their premiums.

So long as the designated reserve ratio has been met, the exception incorporated in this subsection is not intended to allow the FDIC to impose premiums on a percentage of the banking industry that would be significantly beyond the percentage of the banking industry which currently meets these standards, unless economic and banking industry conditions necessitate such an expansion.

SECTION 2018—LIMITATION ON AUTHORITY OF OVERSIGHT BOARD TO CONTINUE TO EMPLOY MORE THAN 18 OFFICERS AND EMPLOYEES

House bill

This provision would terminate the ability of the Thrift Depositor Protection Oversight Board to employ staff on December 31, 1995.

Senate amendment

No provision.

Conference agreement

The Senate recedes with modification to permit the Oversight Board to employ eighteen individuals during the period beginning on January 1, 1996 and ending May 1, 1996.

SUBTITLE B—HOUSING

SECTION 2051—REDUCTION OF SECTION 8 ANNUAL ADJUSTMENT FACTORS (AAF) FOR UNITS WITHOUT TENANT TURNOVER

House bill

This provision makes permanent an FY 1995 appropriation provision that reduces the annual adjustment factor (AAF) by one percentage point for those Section 8 units for which there has been no resident turnover since the preceding annual rental adjustment.

Senate Amendment

The Senate provision is similar to the House, and would limit the amount of the annual adjustment factor (AAF) for section 8 assisted housing by: (1) reducing by one percentage point the rent increase for those Section 8 units in which there has been no resident turnover since the preceding annual rental adjustment; and (2) limiting the overall AAF to the cost of operation of a particular project (excluding the portion of the rent for debt service).

Conference Agreement

The conference agreement generally adopts the Senate provision and would limit the amount of the annual adjustment factor (AAF) or a rent increase for section 8 assisted housing by: (1) reducing by one percentage point the rent increase for those Section 8 units in which there has been no resident turnover since the preceding annual rental adjustment; and (2) limiting the overall AAF to the cost of operation of a particular project (excluding the portion of the rent for debt service).

These reforms are needed to maintain reasonable rental costs in federally assisted projects, many of which receive subsidized rents in excess of the fair market rent for a comparable project in the same market area. This provision is a first step to comprehensive reforms that address the escalating costs of the section 8 project-based contract assistance program.

SECTION 2052—FORECLOSURE AVOIDANCE AND BORROWER ASSISTANCE

House bill

The House bill replaces the current Federal Housing Administration (FHA) assignment program and provides the Department of Housing and Urban Development (HUD) with authority to pay partial mortgage insurance claims limited to the amount equivalent to or less than twelve monthly mortgage payments. As a condition for accepting a partial claim payment, the lender agrees, on a short term basis, to modify the terms of the loan to a level where the borrower has the ability to pay and retain the loan in its portfolio. In some circumstances, however, where the default and modification may be for a longer period of time, the replaced program allows HUD to pay the mortgage insurance claim after loan modification and accept the borrower into a new assignment program. HUD will act as the lender for at least two years or whenever the mortgage may be sold to the secondary markets or otherwise disposed. The assignment program will require HUD to use private sector sources for servicing and foreclosure activities.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes with an amendment to apply the reforms to FHA mortgages originated in FY 1996 and thereafter.

The FHA assignment program was created in 1959, but was not operational until 1976 after a court consent decree required HUD to implement the program. Subsequent modifications to the temporary mortgage assistance program and the assignment program required HUD to accept defaulted FHA borrowers into the program. As a condition for assignment, a borrower's default must be based on circumstances beyond his or her control, such as sickness or loss of employment. Further, there must be a reasonable expectation that the borrower will resume normal and regular mortgage payments and correct any loan deficiencies within a reasonable time. Currently, the program allows up to 36 months in forbearance in anticipation that a mortgagor will be able to resume his or her mortgage payments. Since the majority of assigned loans are insured under the FHA Mutual Mortgage Insurance Fund (MMIF), the cost of the assignment program is borne by the Fund.

The Conference Committee notes that the well-intentioned objectives of the current assignment program are not achieved, and could cause some $1.6 billion in future losses to the FHA MMIF. A recent General Accounting Office (GAO) study indicates that there are currently 71,500 loans in the program and that it "operates at a high cost to FHA's Fund and has not been very successful helping borrowers avoid foreclosures in the long run." Approximately 30% of assigned borrowers eventually become current and graduate out of the FHA assignment program, thereby indicating a current failure rate at approximately 70%. Thus, current FHA borrowers are paying higher premiums to meet the capital ratio standards of the MMIF as well as cover the exorbitant costs of the assignment program.

The replaced assignment program included in the conference report provides HUD with authority to pay partial mortgage insurance claims limited to the amount equivalent to or less than twelve monthly mortgage payments. As a condition for accepting a partial claim payment, the lender agrees, on a short term basis, to modify the terms of the loan to a level where the borrower has the ability to pay and retain the loan in its portfolio. In some circumstances, however, where the default and modification may be for a longer period of time, the replaced program allows HUD to pay the mortgage insurance claim and accept the borrower into a new assignment program. Under a new assignment program, it is expected that HUD will use private sector sources for servicing and foreclosure activities. Given HUD's history of management and capacity deficiencies, the Conferees urge HUD to consider carefully the structure of any new or replaced assignment program.

TERMINATION OF THE RESOLUTION TRUST CORPORATION (RTC) AND THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) AFFORDABLE HOUSING PROGRAMS

House bill

The House provision repeals Section 40 of the Federal Deposit Insurance Act in anticipation of the December 31, 1995 sunset of the Resolution Trust Corporation (RTC) and terminates the RTC Affordable Housing Advisory Board. Remaining functions and authority vested in the RTC Affordable Housing Program are transferred to the Secretary of Housing and Urban Development. This includes monitoring affordable housing resale restrictions, low-income occupancy requirements, and rent limitations and recapturing resale proceeds.

Senate Amendment

No provision.

Conference Agreement

House recedes.

TERMINATION OF HUD-OWNED MULTIFAMILY PROPERTY DISPOSITION PROGRAM

House bill

This provision authorizes HUD to sell multifamily housing projects that are HUD-owned or HUD-held mortgages without restrictions. HUD is given authority to delegate this authority to other parties in order to sell the property more quickly.

Senate Amendment

No provision.

Conference Agreement

House recedes.

RECAPTURE OF RURAL HOUSING LOAN SUBSIDIES BY RURAL HOUSING AND COMMUNITY DEVELOPMENT SERVICE

House bill

This provision extends statutory authority to the Rural Housing and Community Development Service to recapture government subsidy payments at the time the borrower refinances or repays a single family direct loan mortgage financed under Section 502 of the Housing Act of 1949.

Senate Amendment

No provision.

Conference Agreement

House recedes.

TITLE III—COMMUNICATIONS AND SPECTRUM ALLOCATION PROVISIONS

SECTION 3001—SPECTRUM AUCTIONS

(A) EXTENSION AND EXPANSION OF AUTHORITY

House bill

This subsection amends section 309(j) of the Communications Act of 1934 which grants the Federal Communications Commission (FCC) authority to use a system of competitive bidding as a means of granting licenses. The subsection provides that such authority will apply when there are mutually exclusive applications for an initial license for use of the electromagnetic spectrum. Competitive bidding would not be permitted to be used for unlicensed uses. The FCC is required to continue its obligation under section 309(j)(6)(E) to take actions necessary to avoid situations of mutual exclusivity. An example is the 450–470 MHz band, which is shared by low-powered medical telemetry devices.

The subsection also sets forth specific exemptions from the use of competitive bidding. The subsection does not permit the use of competitive bidding for public safety radio services, including non-government uses that protect the safety of life, health and property and that are not made commercially available to the public.

Under this subsection, the FCC may not use competitive bidding for initial licenses for broadcast digital television services assigned by the FCC to incumbent broadcast licenses to replace their current analog signal. This subsection also repeals the authority of the FCC to use random selection (or so-called "lotteries") as an alternative to competitive bidding. Finally, the expansion of competitive bidding authority under this subsection does not apply to any licenses for which the FCC has accepted mutually exclusive applications prior to the date of enactment.

Senate amendment

Section 4001(a) of the Senate bill is similar to the House provisions, but it contains an additional provision, section 309(j)(2)(C) of the Communications Act of 1934. This provision directs the FCC to submit to Congress a proposal regarding the use of auction authority for the assignment of licenses for advanced television services within 180 days of enactment of this section. The FCC would be prohibited from awarding ATV spectrum to existing commercial broadcast licenses, until January 1, 1998. The prohibition does not extend to assignment of ATV spectrum to public broadcasters.

Conference agreement

The Conferees adopt the Senate provisions with modifications. The Conference Agreement provides further limitations on the exemption of auction authority for public safety radio services by accepting the Senate language requiring that the "sole or principal purpose" of the spectrum exempted from auctions be for "the safety of life, health, and property and which are not made commercially available to the public."

Section 3001(a) amends the Communications Act of 1934 and provides that the FCC will employ auctions to assign licenses where there are mutually exclusive applications for such licenses. Section 309(j)(2)(C) of such Act exempts from the new auction authority the grant of licenses or construction permits to existing broadcast television licensees or permittees for advanced television services. Section 309(j)(2)(C)(i) directs the Commission, within 180 days after enactment of this bill, to report to Congress on whether auctions of the license to use spectrum currently reserved for advanced television should be authorized.

The conferees intend that the FCC's report should consider, among other things, the following issues:

The extent to which television broadcast license holders could provide advanced television services using their existing spectrum, in particular by replacing analog broadcasts with digital broadcasts on the same spectrum;

The impact of assigning such licenses by auction on the availability and deployment of advanced television service technology, particularly in rural areas and small television markets, and on the ability of consumers to receive digital television services through over-the-air television broadcasts;

The impact on television broadcasters of a requirement to simultaneously broadcast analog and digital signals for a set period of time, and in particular the impact of such requirements on the cost of broadcasting equipment and on consumer devices (including televisions and converter boxes);

The feasibility of using the spectrum reserved for advanced television for other purposes, including an estimate of the projected receipts that could be derived from auctioning licenses for the use of such spectrum;

The assignment of licenses without auction and the reassignment of current broadcast television spectrum under a system of public auctions upon completion of a transition from analog to digital transmission, including the feasibility and desirability of regrouping broadcast spectrum assignments so that contiguous nationwide spectrum would be available for public auction; and

The costs and uncertainties for broadcasters, including the cost of converting facilities for simulcasting analog/digital signals, and the lack of knowledge of whether consumers will purchase digital equipment, in comparison to the costs and uncertainties if a bidder is not an incumbent broadcaster and has no knowledge of whether new programming services will drive customers' purchases of digital sets.

To allow time for Congress to consider this report, the Commission may not issue licenses or construction permits for advanced television services that replace existing television licenses until November 15, 1996. The conferees do not intend the suspension of licensing authority to delay or prejudice any ongoing Commission proceedings regarding the authorization of advanced television services.

The conferees agree to the House effective date with a modification to clarify that amendment to Section 309 shall not apply with respect to any license or permit for a terrestrial radio or television broadcast station for which the FCC has accepted mutually exclusive applications on or before the date of enactment of this Act.

(B) COMMISSION OBLIGATION TO MAKE ADDITIONAL SPECTRUM AVAILABLE BY AUCTION

House bill

This subsection directs the FCC to auction 100 megahertz (MHz) of spectrum located below 3 gigahertz (GHz) by September 30, 2002, which prior to the date of enactment, have not been designated by the FCC for assignment by auction and have not been identified by the National Telecommunications and Information Administration (NTIA) as reallocable frequencies. The FCC must auction the licenses for the use of bands of frequencies in blocks of at least 25 MHz unless the FCC determines that a combination of smaller bands can reasonably be expected to produce greater receipts for the U.S. Treasury.

In making available such bands of frequencies for competitive bidding under this subsection, the FCC must consider, first and foremost, the promotion of the most efficient use of the spectrum. The FCC must also consider the cost to incumbent licensees of relocating existing uses to other bands of frequencies or other means of communication. The FCC is also directed to take into account the needs of public safety users when making allocation decisions. Finally, in making bands of frequencies available for auction, the FCC must ensure that such assignments comply with the requirements of international agreements concerning spectrum allocations.

In making available bands of frequencies for competitive bidding pursuant to this section, if the FCC is unable to provide for the effective relocation of incumbent licenses, it shall notify the NTIA that it has identified bands of frequencies suitable for relocation and which could be reallocated for private use.

Senate amendment

Section 4001(b) of the Senate Amendment is virtually identical to the House provision, except that subsection (b)(1)(D)(iii) and subsection (b)(2)(E) are unique in comparison to the House bill. Subsection (b)(1)(D)(iii) ensures that the frequencies chosen by the

FCC must not have been reserved for government use under section 305 of the Communications Act of 1934.

The Senate included subsection (b)(2)(E) which directs the FCC in exercising its authority to "take into account costs to satellite service providers that would result from multiple auctions of like spectrum internationally for global satellite systems."

Conference agreement

The Conferees adopt the Senate provisions.

(C) IDENTIFICATION AND REALLOCATION OF FREQUENCIES

House bill

The House provision requires that in response to a Notice from the FCC, the NTIA shall prepare and submit a report to the President and Congress identifying and recommending for reallocation frequencies that are assigned to the Federal government stations and are not required for the present or identifiable future needs of the Federal government and that are suitable for the uses identified in the Commission's Notice.

Senate amendment

The Senate provision is identical to the House provision but it adds new subsections (g), (h) and (i) to section 113 and 114 of the National Telecommunications and Information Administration Organization Act. Together, these additions to section 113 and 114 provide authority for Federal agencies to accept reimbursement or payment from private parties for the costs of relocation.

Conference agreement

The Conference Agreement adopts the Senate provisions with clarifications. The conferees intend that the provisions of this section would apply to the United Postal Service, which has an account in the United States Treasury and operates using government frequencies.

(D) IDENTIFICATION AND REALLOCATION OF AUCTIONABLE FREQUENCIES

House bill

This subsection requires the NTIA to submit a second reallocation report to Congress, identifying and recommending for reallocation a single frequency band of at least 20 MHz, located below 3 GHz, and which meets the criteria of section 113(a) of the National Telecommunications and Information Administration Organization Act. Within one year after receipt of the second reallocation report, the FCC shall submit a plan to the President and Congress, and implement such plan for the allocation and assignment of such frequencies in accordance with section 309(j) of the Communications Act of 1934.

Senate amendment

The Senate provision is identical to the House provision.

Conference agreement

The Conference Agreement accepts the House provision.

TITLE IV—EDUCATION AND RELATED PROVISIONS

SUBTITLE A—HIGHER EDUCATION

Unless otherwise noted, all amendments proposed to be made by the conference report refer to the Higher Education Act (HEA) of 1965 and the effective date of these amendments is January 1, 1996.

PARTICIPATION OF INSTITUTIONS IN DIRECT LOAN PROGRAM

House bill

The House bill provides for the repeal of the direct loan program as of July 1996.

Senate amendment

The Senate amendment would limit participation in the direct loan program as follows:

1. Five percent of new student loan volume for academic year 1994–1995.
2. For academic year 1995–1996, and each succeeding year, direct loans will be provided to those students and parents of students attending institutions which have applied and been accepted for participation in the direct loan program on or before September 30, 1995, not to exceed 30 percent of new student loan volume including direct consolidation loans.
3. For academic year 1996–1997 (starting July 1, 1996), and each succeeding year, direct loans will be provided only to those students and parents of students attending institutions which have applied and been accepted for participation in the direct loan program on or before September 30, 1995, not to exceed 20 percent of new student loan volume including direct consolidation loans.

Conference agreement

The Senate recedes with an amendment to limit the size of the direct loan program as follows:

1. Five percent of new student loan volume for academic year 1994–1995.
2. For academic year 1995–1996, and each succeeding year, direct loans will be provided to those students and parents of students attending institutions which have applied and been accepted for participation in the direct loan program on or before September 30, 1995, not to exceed 30 percent of new student loan volume including direct consolidation loans.
3. For academic year 1996–1997 (starting July 1, 1996), and each succeeding year, direct loans will be provided only to those students and parents of students attending the 102 institutions which participated in the direct loan program during the 1994–95 academic year, not to exceed 10 percent of new student loan volume including direct consolidation loans.

In 1993, Congress accelerated the 5 percent direct loan demonstration enacted in the 1992 amendments to the Higher Education Act to a program that is scheduled to account for 60 percent of federal student loan volume by 1998. This change was made through the budget reconciliation process, and the scoring used by the Congressional Budget Office (CBO) at that time made direct lending look significantly cheaper than guaranteed loans.

The 1993 scoring was flawed and failed to take into account any administrative costs of servicing or collecting on direct loans past the 5-year budget bill. Earlier this year, Congress passed the budget resolution, which contained a provision that changes the scoring so that guaranteed lending and direct lending are now scored in the same way. An October 26, 1995, letter from the Congressional Budget Office (CBO) to Senator Domenici confirmed this by stating that, "the Credit Reform Act amendment allows direct comparisons between the costs of the guaranteed and direct loan programs." The CBO letter also stated that, "By defining the direct administrative costs of direct loans and requiring these costs be calculated over the life of the loan portfolio, the resolution allowed for the costs of direct and guaranteed loans to be evaluated on a similar basis. Thus, all of the program costs for both programs are included in the resolution baseline and are accounted for in the same way."

This change in the scoring results in a more accurate accounting of direct lending and, thus, today significant savings can be realized by decreasing the size of the program. The conferees chose to include a decrease in the direct loan program as one of the savings items in the reconciliation bill to achieve required savings rather than a number of other elements that would have increased costs to students.

In addition, on a policy basis, the conferees are very concerned about the prospects of the Department of Education becoming one of the largest lending institutions in the country. Whether the Department will be able to effectively track and collect the loans which it has made to date is a question which needs to be answered before significant expansion of the direct loan program occurs. A demonstration program will allow questions of this nature to be answered prior to further program expansion.

CONSCRIPTION

Conference agreement

Both the House bill and Senate amendment eliminate the authority of the Secretary of Education to force schools into the direct loan program. This provision is unnecessary in an environment where direct loan volume is limited.

ADMINISTRATIVE FUNDS

House bill

The House bill defines direct administrative expenses for Part D and limits indirect administrative expenses to $110 million for fiscal year 1996 with $40 million dollars allotted to cover the costs of the administrative cost allowance for the guaranty agencies accrued prior to January 1, 1996, and $70 million per year for fiscal years 1997 through 2002.

Senate amendment

The Senate amendment defines direct administrative expenses for Part D and limits indirect administrative expenses for Parts B and D to $85 million per year for fiscal years 1996 through 2002, except that additional sums shall be available for fiscal year 1996 to cover the costs of the administrative cost allowance for the guaranty agencies accrued prior to January 1, 1996.

Conference agreement

The House recedes.

The conference agreement sets new limits on funds that the Department of Education will receive to administer the direct loan program since the size of the direct loan program is decreased. The Administration claims that such new levels will "gut" the Department of Education's administrative control and oversight of both the guaranteed and direct loan programs. However, the yearly funding levels are based on budget information received from the Department of Education. The information received indicates that these amounts are reasonable and appropriate.

The budget reconciliation bill combined with the proposed fiscal year 1996 Senate appropriations bill would level fund the administrative funds for student aid administration at the 1994 level of $239 million. Under the conference agreement, student aid administrative expenditures for fiscal year 1996 will still double from what was spent to administer student loans just five years ago. However, the agreement will stop the massive increases in administrative costs which have occurred over the last four years. Level funding at the 1994 level will fully provide for all necessary personnel, contract, oversight, equipment, publications, and administrative costs that are necessary to effectively and efficiently manage the student aid programs.

Both the House bill and the Senate amendment limit the use of section 458 funds by the Secretary to indirect administrative costs related to direct and guaranteed loans. Activities that were funded historically on a cash basis with discretionary appropriated administrative funds in the guaranteed loan program shall remain on a cash basis for both the guaranteed and direct loan programs and be considered indirect administrative expenses. Indirect administrative expenses can include the cost of Department personnel and required oversight activities. The direct administrative expense account is not intended to be used for guaranteed loan costs nor for the costs of personnel or other administrative costs of the Department of Education for the Part D program. Salaries and expenses for the Department of Education, as for all other government agencies, are funded by annual appropriations. The conferees intend this practice to continue.

LIMITATION ON INDIRECT COSTS

House bill

The House bill states that indirect costs for direct loans may not exceed 30 percent of the section 458 funds.

Senate amendment

No provision.

Conference agreement

The House recedes as inclusion of this provision violates the Byrd rule.

DEFAULT RATES

House bill

No provision.

Senate amendment

The Senate amendment clarifies the HEA to reflect congressional intent that the Secretary is required to calculate default rates for direct lending schools and to terminate such schools if they exceed the default rates established in the law, as is the current procedure for schools participating in the guaranteed loan program.

The Secretary is directed to develop criteria for the calculation of default rates for institutions participating in the direct loan program within 120 days after date of enactment of this legislation. The methodology, criteria, and procedures to be used in determining such default rates must be comparable to those applied to schools participating in the guaranteed loan program under Part B of the HEA. Such standards must be promulgated no later than 120 days after the date of enactment of this legislation or the Secretary may not make any new direct loans.

Conference agreement

The House recedes with an amendment to clarify the fact that the conferees intend the Department of Education to apply comparable default rate calculations for both guaranteed loans and direct loans repaid through income contingent repayment. The prohibition on the Secretary making income contingent loans if default rate regulations are not issued within 120 days after enactment is not included in the conference agreement.

TRANSITION TO DIRECT LENDING

Conference agreement

Both the House bill and the Senate amendment eliminated all references to the transition to the direct loan program from the HEA. These references are no longer necessary or correct in the context of the legislation which does not contemplate a transition from guaranteed lending to direct lending.

ADMINISTRATIVE FEES FOR SCHOOLS AND ALTERNATIVE ORIGINATORS

Conference agreement

Both the House bill and the Senate amendment repeal the authority to pay schools or alternative originators to originate direct loans.

STATE RISK-SHARING

House bill

No provision.

Senate amendment

The Senate amendment applies the state risk-sharing provision in current law to direct loan schools. The provision currently applies only to guaranteed loan schools. It mandates that states pay to the federal government a yearly fee based on the cohort default rates of the schools in their state which participate in the federal student loan programs. The Congress anticipates that the Department of Education will implement this provision in the same manner for both guaranteed and direct lending.

Conference agreement

The House recedes.

GRACE PERIOD INTEREST SUBSIDY

House bill

The House bill eliminates payment of the interest on a subsidized Stafford student loan by the federal government on behalf of the student during the six-month period after a student leaves school.

Senate amendment

No provision.

Conference agreement

The House recedes.

SAME LOAN TERMS AND CONDITIONS

House bill

No provision.

Senate amendment

Although the Higher Education Act states that the terms and conditions of the direct and guaranteed student loan programs are supposed to be the same, the Department of Education has instituted more flexible repayment options for direct loan borrowers. The legislation clarifies and strengthens congressional intent that direct and guaranteed loans are required to have the same terms, conditions, eligibility requirements, interest rates, loan limits, and administrative requirements for origination, payment, and processing of applications. Additionally, the Secretary is required to issue corresponding regulations not later than 120 days after the enactment of this legislation.

Conference agreement

The House recedes.

COMMON FORM

House bill

The House bill amends the HEA to clarify that the Part B loan application may be the Free Application for Federal Student Assistance (FAFSA). The bill also clarifies that the application may be in an electronic or other format in order to facilitate use by borrowers and institutions. Finally, this section clarifies that application data shall be available to any guaranty agency that is authorized to receive such data by the appropriate institution for the purpose of processing Part B loan applications.

Senate amendment

No provision.

Conference agreement

The House recedes as inclusion of this provision violates the Byrd rule. However, the conferees believe that it would be beneficial to students and institutions to have the FAFSA serve as the single loan application for Part B and Part D loans. In 1993, the Advisory Committee on Student Financial Assistance recommended that the FAFSA serve as the single loan application, and that recommendation was adopted for Part D loans, but not for Part B loans. The conferees hoped to correct this disparity, but the budget rules do not permit this change to be made in this legislation. Therefore, the Secretary is encouraged to proceed in that direction and to use his waiver authority, if necessary, under 487A of the Higher Education Act in order to permit this practice for the benefit of students and institutions.

ELECTRONIC FORMS

House bill

The House bill permits the development, production, distribution and use of an electronic version of the free federal common application form by guaranty agencies, lenders, and consortium thereof to expedite the processing of student loans. This authority will enable lenders and guaranty agencies to achieve administrative efficiencies necessary to sustain the subsidy reductions contained elsewhere in this bill. The form must be approved by the Secretary to ensure its consistency with the requirements of the HEA. Certification of the accuracy of the output of the application by the applicant is allowed in a subsequent document. Fees in connection with the use of this form are prohibited.

Senate amendment

No provision

Conference agreement

The House recedes as inclusion of this provision violates the Byrd Rule. However, in the 1992 reauthorization of the Higher Education Act, Congress emphasized the need to simplify and streamline the financial aid delivery system through standardization, electronic forms, and electronic communication linkages. Computerized financial aid applications and administrative processes that allow students to apply for federal, state, and institutional aid electronically, have been developed for the guaranteed loan program. This computerized process would eliminate the need for filling out multiple paper copies and simplify the process for students.

For example, once a student fills in his or her name and address, these data are incorporated into all of the other applications incorporated into the software. The software used in the process also has internal checks that reduce errors, saving administrative time and costs on the part of the school and frustration on the part of the student. The software will not permit an application to be filed if required information, such as home address, is missing. Schools also benefit by being able to transmit data electronically to the Department's central processor expediting the submission of forms as well as the receipt by students of loan proceeds.

In 1992, Congress restricted the production, use and distribution of the FAFSA. This was done to prevent questions other than those approved by the Secretary from being included in the FAFSA. However, software that involves reproducing the FAFSA in electronic form, and not adding questions to it, ought to be available to all students. Approval of such software is not in any way inconsistent with congressional intent. The conferees therefore ask the Secretary to exercise his waiver authority under section 487A of the Higher Education Act to obviate any statutory obstacles which, in the opinion of the Department, prevent the production, distribution and processing of the FAFSA in electronic form.

However, the conferees are sympathetic to various concerns raised by the Department of Education regarding the availability of electronic data for analysis by the Department, two-way exchange of electronic information between the Department and outside party processors to coordinate applications and reapplications, and security measures to protect private information. The conferees intend that the Secretary use his authority to approve electronic versions of the FAFSA to assure that these concerns are adequately and reasonably addressed. It is anticipated that entities seeking to produce, use, distribute, and process the electronic FAFSA will cooperate with the Secretary to assure that changes to current law do not result in undermining on-going efforts to simplify the application and processing of Federal student assistance.

GUARANTEED CONSOLIDATION LOANS

Conference agreement

Both the House bill and the Senate amendment make borrowers of direct loans eligible to consolidate such loans into a guaranteed consolidation loan.

DIRECT CONSOLIDATION LOANS

House bill

No provision.

Senate amendment

The Higher Education Act is clarified to reflect congressional intent that a guaranteed loan borrower is only eligible to obtain a direct consolidation loan when he or she is unable to obtain a consolidation loan from a loan holder. The law is also modified to limit eligibility of guaranteed loan borrowers to those students who are unable to obtain a consolidation loan with an income-contingent loan repayment schedule from a loan holder. Since income-contingent repayment is allowed in the guaranteed loan program in the conference bill, students should not need to consolidate into the direct loan program to obtain this repayment method.

This subsection requires the Secretary to establish appropriate certification procedures to verify eligibility of borrowers for consolidation loans, and it prohibits the Secretary from offering consolidation loans if the Department lacks the administrative capacity or if the projected loan volume of direct consolidation loans would destabilize the availability of guaranteed loans.

Conference agreement

The House recedes.

INCOME CONTINGENT REPAYMENT

House bill

No provision.

Senate amendment

The legislation authorizes guaranteed student loan borrowers to repay their loans through income-contingent repayment, which is an option currently available only in the direct loan program. The repayment schedules may be comparable to those developed for the Part D direct loan program.

Conference agreement

The House recedes with an amendment to require that the repayment schedules must be comparable to those developed for the Part D direct loan program. It is the conferees intent that in the case of a student desiring income-contingent repayment from a lender which lacks the capacity to offer income-contingent repayment, such lender will sell the student's loans to another lender that offers such repayment option.

PLUS LOAN LIMITS

House bill

The House bill establishes annual borrowing limits for borrowers of PLUS loans at $15,000 per student in any academic year.

Senate amendment

No provision.

Conference agreement

The Senate recedes. The conferees agree that unlimited borrowing by parents without sufficient credit analysis may not be in the best fiscal interests of the federal government or the actual borrower. For this reason, the conferees agreed to a maximum borrowing of $15,000 on parent loans per student per academic year. A

$15,000 maximum should not create a hardship for parents and students since the current average parent loan is less than $6,000.

PLUS LOAN INTEREST RATE INCREASE AND REBATE

House bill

The House bill provides for an increase in the PLUS program loan interest rate from the 52-week Treasury bill plus 3.1 percent capped at 9 percent to the 52-week Treasury bill plus 4 percent capped at 11 percent, for loans with a first disbursement after January 1, 1996. The House bill also requires holders of PLUS program loans to pay a rebate to the Secretary equal to .80 percent of the outstanding principal balance of loans held on June 30 and December 31, payable within 60 days after such date.

Senate amendment

No provision.

Conference agreement

The House recedes.

GUARANTY AGENCY EXTENDED WITHHOLDING

Conference agreement

Both the House bill and the Senate amendment require a guaranty agency to use at least 50 percent of its reserve funds to purchase and hold defaulted loans from lenders. Except under certain circumstances, guarantors must wait at least 180 days after such purchase before submitting claims for reimbursement to the Secretary. During this time, guarantors will work with borrowers to attempt to bring the loan into repayment so that no claim for reimbursement from the federal government is ever filed. Currently, guaranty agencies must file for reimbursement from the Secretary after 45 days.

If such an attempt is successful, the loan will be sold to an eligible lender. Defaulted loans that are held by guarantors for the additional 180 days will be considered assets for the purposes of calculating guarantors' reserve levels.

In addition to saving money for the federal government, this provision gives students an additional 180 days after default to make satisfactory repayment arrangements before having their tax refunds attached by the IRS or facing other, more onerous, collection activities. Borrowers who are able to return their loans to good standing will be eligible for additional aid and other benefits of the loan program.

GUARANTY AGENCY ADMINISTRATIVE COST ALLOWANCE

House bill

The House bill would require originating lenders to pay to the guaranty agency which guarantees a loan, a fee equal to 0.70 percent of the principal amount of the loan for loans having a first disbursement after January 1, 1996. These funds are used by guaranty agencies for administrative costs of collections, preclaim assistance, monitoring enrollment and other program costs. No part of these payments may be assessed or collected directly or indirectly from the borrower.

Senate amendment

The Senate amendment would decrease the payment of the administrative cost allowance to guaranty agencies from 1 percent to either: .85 percent of the total principal amount of the loans for which insurance was issued during the fiscal year, or .08 percent of the original principal amount of the loans guaranteed by the program that are outstanding at the end of the previous fiscal year. The amount required to be paid by the federal government would be limited to $180 million per year.

Conference agreement

The House recedes with an amendment. The guaranty agencies would only receive .85% of the total principal amount of the loans for which insurance was issued during the fiscal year and the cap for fiscal years 1996, 1997, and 1998 would be increased to $220 million. The decrease in administrative funds paid to guaranty agencies will require more efficiency on the part of all agencies since they are expected to provide a high level of service with reduced operating funds.

GUARANTY AGENCY RESERVE RATIOS

House bill

Guaranty agencies are required to maintain a minimum reserve level equal to .9 percent of outstanding loans guaranteed.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

GUARANTY AGENCY REINSURANCE

House bill

The House bill reduces the guaranty agency reinsurance rate from 98 percent, 88 percent, 78 percent (based on the average default rate of the guaranty agency's loans) to 96/86/76 percent.

Senate amendment

No provision.

Conference agreement

The Senate recedes. The conferees agree that all parties should have a greater share of risk in the guaranteed loan program.

DEFAULTED CONSOLIDATION LOAN RETENTION

House bill

No provision.

Senate amendment

The Senate amendment lowers the collection retention rate for defaulted loans that are consolidated from 27 cents to 25 cents on the dollar.

Conference agreement

The House recedes with an amendment to lower the collection retention rate to 18.5 cents on the outstanding principal, interest and collection costs.

SUPPLEMENTAL PRECLAIMS ASSISTANCE

Conference agreement

Both the House bill and the Senate amendment eliminate payment to guaranty agencies for supplemental preclaims assistance to lenders for the purpose of preventing defaults. Currently, these payments equal 1 percent of the principal and interest of loans for which assistance was provided to lenders and the lenders did not file a default claim on or before 270 days after the loan became delinquent. Guaranty agencies are still required to provide this assistance (using their general operating funds) even though they will no longer receive a special payment to do so.

MANDATORY ASSIGNMENT

Both the House bill and Senate amendment include a provision to ensure that standards for the mandatory assignment of defaulted loans to the Secretary from the guaranty agencies revert to the standards enacted as part of the Higher Education Amendments of 1992. The legislation specifies that general criteria must be established through negotiated rulemaking.

Conference agreement

Both the House and Senate recede.

TERMINATION OF GUARANTY AGENCIES

House bill

The House bill deletes the Secretary's authority to terminate a guaranty agency for the purpose of achieving an orderly transition to the direct loan program. In addition, a provision is included requiring a hearing on the record prior to the termination of a guaranty agency agreement. The legislation mandates that funds recovered from a terminated guaranty agency shall be returned to the Treasury and used for the purpose of lowering the federal debt.

Senate amendment

The Senate amendment includes the same provisions as the House bill. In addition, the Senate amendment further restores to its pre-1993 state the conditions under which the Secretary may terminate guarantors, essentially the same as those established by the 1992 amendments to the Higher Education Act. The Secretary will still possess ample, yet more closely circumscribed, powers to terminate a guarantor that is in serious trouble and in danger of collapse.

The subsection further stipulates that, in the event a guarantor is terminated by the Secretary, the Secretary must abide by the recommendations of the affected State for all guarantor portfolio transfers, mergers and consolidations. In addition, the Secretary may take over a guaranty agency's portfolio only in the event that no existing guaranty agency is willing to act as a successor agency for the affected guarantor.

The Secretary must provide opportunities for hearings on the record in cases where he is exercising his authority to terminate guarantor contracts.

Conference agreement

The Senate recedes. The conferees believe that in order to maintain a viable guaranteed loan program, it is necessary to modify these provisions which were adopted in 1993 in order to provide for the easy termination of guaranty agencies as the transition to direct lending was implemented. With the transition effectively terminated in this legislation, guaranty agencies will continue to be critical to the loan program and should not be subject to unilateral termination by the Department. In the event funds are recalled from a guaranty agency, it is the intention of the conferees to require such funds be deposited with the Treasury for purposes of deficit reduction, rather than allowing the Secretary to determine the use of such funds.

USAGE OF GUARANTY AGENCY RESERVE FUNDS

House bill

No provision.

Senate amendment

The Senate amendment clarifies that guarantor reserve funds can be used to pay for future as well as current program costs.

Conference agreement

The Senate recedes.

LENDER RISK-SHARING

Conference agreement

Both the House bill and the Senate amendment decrease the amount the federal government reimburses lenders and exceptionally well performing lenders for defaulted guaranteed loans in the Federal Family Education Loan Program (FFELP) from 98 cents to 95 cents on the dollar.

LENDER ORIGINATION FEE

House bill

The House bill lowers the lender origination fee paid to the federal government from .5 percent to .3 percent.

Senate amendment

The Senate amendment increases the lender origination fee on guaranteed loans from .5 percent to 1.0 percent, including consolidation loans.

Conference agreement

The House recedes with an amendment to increase the fee to .8%.

HOLDER TRANSFER FEE

House bill

The House bill requires a lender or holder which purchases or takes assignment of a loan from another lender or holder to pay the Secretary a transfer fee equal to 0.20 percent of the principal of the loan.

Senate amendment

No provision.

Conference agreement

The House recedes.

HOLDER REBATE FEE

House bill

No provision.

Senate amendment

The Senate amendment imposes a new .05 percent annual fee on loans in repayment by the loan holders on all new guaranteed student loans made after January 1, 1996.

Conference agreement

The House recedes with an amendment to add PLUS loans to the loans subject to the rebate fee and to increase the fee to .07 percent.

LENDERS OF LAST RESORT

House bill

Lender of last resort provisions are modified to require applications to be processed within 15 days and borrowers are only required to obtain one lender rejection in order to establish eligibility for lender of last resort.

Senate amendment

No provision.

Conference agreement

Senate recedes. The conferees agree that loans made under the lender of last resort should be processed in a timely manner without significant burdens on students.

ELIGIBLE LENDERS

House bill

The House bill expands the definition of eligible lender to provide for an additional category of eligible lender under FFELP. This new category would permit certain non-bank lenders, currently eligible pursuant to another subsection but that are experiencing difficulties in lending in certain states, to engage in guaranteed student lending in all states. The new category involves an eligible lender's status as a finance company under state law and would be regulated both by appropriate state regulatory agencies and the Department of Education.

In addition, the House bill clarifies that loans held in trust by an eligible lender for the benefit of a third party are not to be counted when determining a lender's primary consumer credit function.

Senate amendment

No provision.

Conference agreement

The House recedes.

SMALL LENDER AUDITS

Conference agreement

Both the House bill and Senate amendment exempt lenders who hold or originate less than $5 million a year in student loans from burdensome and costly annual compliance audits. The cost reductions achieved by small lenders with this provision will enable many such lenders to continue to participate in the guaranteed loan program. The cost of the audits currently required sometimes exceeds the annual earnings of some small lenders from the guaranteed loan program.

REAUTHORIZATION

Conference agreement

Both the House bill and Senate amendment reauthorize the student loan programs through the year 2002. This is necessary in order for the Congressional Budget Office to score savings for the loan programs in this bill.

CONNIE LEE PRIVATIZATION

Conference agreement

Both the House bill and Senate amendment include an amendment to sever any and all of the federal government's links to the College Construction Loan Insurance Association (Connie Lee). Connie Lee was authorized in the 1986 amendments to the Higher Education Act to assist in financing the construction and renovation of certain education facilities. In the Corporation's authorizing language it was intended that the federal government's ownership interest in the Corporation would eventually terminate. This amendment provides for that termination through the sale of the stock of the Corporation owned by the Secretary of Education.

ELIGIBLE INSTITUTION

House bill

The House bill amends the Higher Education Act by requiring that, for the purposes of determining whether an institution meets the requirements of clause (6) (commonly referred to as the 85/15 rule), the Secretary of Education shall count revenues from programs of education or training that do not meet the definition of an eligible program in subsection (e), but are provided on a contractual basis under federal, state, or local training programs, or to business or industry. The provision also prohibits the Secretary from considering the financial information of any institution for a fiscal year which began on or before April 30, 1994.

Senate amendment

No provision.

Conference agreement

The House recedes.

SERVICE CONTRACT ACT OF 1965

House bill

The House bill repeals the Service Contract Act of 1965.

Senate amendment

No provision.

Conference agreement

The House recedes. The provision was dropped because it violates the Byrd Rule, section 313 of the Congressional Budget Act of 1974.

SUBTITLE B—PROVISIONS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

House bill

The House bill would amend the Employee Retirement Income Security Act of 1974 (ERISA) to provide that the 30-day minimum waiting period between the date an explanation of the joint and survivor annuity is provided and the date the annuity starts may be waived by the participant. Title XI contains an identical amendment to the tax code; this is a necessary, conforming amendment to ERISA. This waiver would cause a slight acceleration in distribution of qualified plans.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

TITLE V—ENERGY AND NATURAL RESOURCES PROVISIONS

SUBTITLE A—NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES

NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES

Current law

The NRC is responsible for ensuring the safety of civilian uses of nuclear materials. The independence and integrity of this agency is essential to maintaining the confidence of the public in the use of nuclear energy and radioactive materials. Thus, a reliable stream of long-term funding is vital to assuring the uninterrupted operation of this important organization.

The NRC budget is paid for entirely through user fees on licenses, except for work on the high-level nuclear waste repository which is paid for through the Nuclear Waste Fund. User fees are an equitable way of paying for the cost of Federal regulation. Currently, user fees fund several Federal agencies or programs including the Federal Energy Regulatory Commission, the Securities and Exchange Commission, and the pipeline safety program under the authority of the U.S. Department of Transportation.

By collecting user fees, those who use an agency's resources pay the costs of funding that agency. Those who use the greatest amount of the agency's resources are required to pay the greatest annual fees. In the case of the NRC, nuclear licensees pay for the cost of Federal regulation and then pass that cost on to their customers. The result is an equitable one: those who do not buy electricity or products generated by nuclear power do not bear the cost of regulating it.

Section 6101 of the Omnibus Reconciliation Act of 1990 (P.L. 101–508) requires the Nuclear Regulatory Commission to collect annual charges from its licensees to provide offsetting collections to pay for its programs. Specifically, section 6101 allows the NRC to collect amounts which, when added to other amounts collected by the NRC (such as fees collected under the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701), equals 100 percent. However, current law only provides authority to collect fees and annual charges equal to 100 percent of the NRC budget through fiscal year 1998. Absent an extension, after fiscal year 1998, NRC's permanent authority to collect 33 percent of its budget authority through fees and annual charges would take effect.

Currently, the NRC budget is made up of money collected through three different methodologies. First, the NRC receives appropriations from the Nuclear Waste Fund established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) for licensing the Department of Energy's nuclear waste management program. Charges for these activities are not recovered through annual charges because nuclear utilities are paying for the cost of these activities through their payments to the Nuclear Waste Fund. Thus, recovery of Nuclear Waste Fund appropriations through the annual charge would constitute double payment by the utilities.

The NRC also recovers a portion of its budget through fees assessed on licensees under the Independent Offices Appropriations

Act of 1952 (31 U.S.C. 9701). This Act provides that anyone receiving a service or a thing of value from the NRC shall pay the NRC's cost of providing individually identifiable services to applicants and holders of NRC licensees from the recipients of those services. Finally, generic NRC activities that benefit all licensees generally are recovered through annual charges.

House bill

Section 3031 of the House bill extends NRC authority to collect up to 100 percent of its budget through user fees through fiscal year 2002. This extension will generate revenues in amounts sufficient to offset expenditures by the NRC. The NRC is charged by the Omnibus Reconciliation Act of 1990 to assess these charges under the principle that licensees who require the greatest expenditures of the NRC's resources should pay the greatest annual charge. This section does not alter, in any way, the fee structure as currently collected by the NRC.

Senate amendment

Same provision, except that fees are extended through fiscal year 2005.

Conference agreement

The conference agreement includes the House language.

SUBTITLE B—DEPARTMENT OF ENERGY ASSETS

Chapter 1—United States Enrichment Corporation

Present law

Title IX of the Energy Policy Act of 1992 added a new title II to the Atomic Energy Act of 1954. Title II of the Atomic Energy Act established a wholly owned government corporation known as the United States Enrichment Corporation (USEC) to operate the Federal Government's uranium enrichment enterprise. Chapter 25 of title II set up a process by which ownership of the government-owned corporation would be sold to the private sector.

House bill

Title III, subtitle C of the House bill amends title II of the Atomic Energy Act to facilitate the sale of USEC to private investors and to maximize the return to the U.S. Treasury.

Senate amendment

The Senate amendment contains a comparable provision. The Senate amendment repeals most of title II of the Atomic Energy Act but provides new statutory authority similar to the House bill.

Conference agreement

The conference agreement follows the Senate amendment with minor changes.

Section 5012(b)(8) of the Senate amendment prohibiting the swap, exchange, or loan of Russian uranium hexafluoride was deleted, although the conferees intend that any of the Russian uranium hexafluoride sold pursuant to paragraph (5) of section 5212(b) of the Conference Agreement may be swapped, exchanged, or loaned solely for the purpose of facilitating the further processing and use as nuclear fuel, and that the Department of Commerce shall establish procedures to ensure that these limitations are not circumvented.

Section 5013(a) of the Senate amendment relating to low-level waste disposal was rewritten to eliminate matter that could have been deemed extraneous under section 313 of the Congressional Budget Act. The conferees intend the revised provision in section 5213(a) of the Conference Agreement to require the Department of Energy to offer low-level waste disposal services to any person licensed by the Nuclear Regulatory Commission to operate a uranium enrichment facility on the same terms as it provides those services to USEC. The conferees believe this policy is essential to avoid anti-competitive effects in the domestic uranium enrichment market.

Section 5013(c) of the Senate amendment relating to State and interstate compact low-level waste facilities was deleted to eliminate matter that could have been deemed extraneous under section 313 of the Congressional Budget Act. Notwithstanding the elimination of the provision, the conferees believe that nothing in the conference agreement, the Low-Level Radioactive Waste Policy Act, any compact consent act, or any other law can be read to require a State or interstate compact to provide treatment, storage, or disposal to any low-level radioactive waste (including mixed waste) attributable to the operation, decontamination, or decommissioning of any uranium enrichment facility.

Finally, a provision in the Senate amendment to commercialize gaseous diffusion technology was removed.

Chapter 2—Department of Energy

DEPARTMENT OF ENERGY ASSET SALES

During the Cold War, the Department of Energy stockpiled large inventories of industrial materials that were needed for weapons production activities. As those activities are reduced in scope and facilities closed, those materials are no longer needed in large quantities. In the past, DOE has had no clear accounting of these inventories on a Department-wide basis. However, an initial assessment shows that this inventory includes at least 10,000 pounds of precious metals (such as silver, platinum and gold), and large volumes of non-precious metals, rare gases and fuel. Maintaining these inventories contributes to high overhead costs associated with storage, security and handling of these materials. In total, the value of these assets is estimated to be as much as $300 million. This subpart would require DOE to conduct a program to identify and sell a minimum of $225 million in assets by October 1, 2000. The Subpart would expedite these sales by providing an exemption from the Federal acquisition regulations that govern sales of "excess" materials by Federal agencies.

House bill

The House bill had no such provision.

Senate amendment

The Senate amendment requires the Secretary of Energy to conduct an asset management and disposition program that will result in no less than $225 million in receipts and savings by October 1, 2000. It also requires the Secretary to sell a minimum 1,139,000,000 pounds of fuel, 136,000 tons of chemicals and industrial gases, 557,000 tons of scrap metal, 14,000 radiation sources, 17,000 pieces of major equipment, 11,000 pounds of precious metals, and 91,000,000 pounds of base metals.

In order to expedite the sales and maximize the value of the assets, this provision exempts the asset sales under this subsection from provisions of the Federal Property and Administrative Services Act of 1949 and the Surplus Property Act of 1944. It also requires that the Secretary consult with appropriate executive agencies to avoid market disruptions that might result from the asset sales.

This provision requires that all proceeds from the asset sales be returned to the Treasury as miscellaneous receipts.

Conference agreement

The House accedes to the Senate provision.

SALE OF WEEKS ISLAND OIL AND LEASE OF EXCESS STRATEGIC PETROLEUM RESERVE CAPACITY

House bill

The House bill authorizes the lease of excess Strategic Petroleum Reserve capacity.

Senate amendment

The Senate bill authorizes the sale of 32 million barrels of oil contained in the Strategic Petroleum Reserve. It also authorizes the lease of excess Strategic Petroleum Reserve capacity, and it authorizes that beginning in fiscal year 2001 one-half of the revenues generated by such lease be available to the Secretary of Energy for the purchase of oil for the Strategic Petroleum Reserve.

Conference agreement

The Conference Report provides for the sale of 32 million barrels of oil contained in the Strategic Petroleum Reserve. The Secretary shall, to the greatest extent practicable, sell oil from the reserve in a manner which minimizes the impact of such sale upon supply levels and market forces. The Conference Report also authorizes the lease of excess Strategic Petroleum Reserve capacity, and provides that beginning in fiscal year 2001 (except for years 2003 and 2004) one-half of the revenues generated by such lease be available to the Secretary of Energy for the purchase of oil for the Strategic Petroleum Reserve.

OTHER

WASTE ISOLATION PILOT PLANT

House bill

Subtitle D of Title 3 of H.R. 2491 contained the ''Waste Isolation Pilot Plant Land Withdrawal Amendment Act,'' the purpose of which was to eliminate outdated statutory requirements for, and expedite the commencement of, operations at the Waste Isolation Pilot Plant (WIPP). The WIPP is the nation's repository for the permanent disposal of transuranic materials.

Transuranic (TRU) elements—those with a periodic table value greater than uranium—are generally man-made products synthesized in laboratory conditions. Most TRU waste in the United States consists of trash, such as protective clothing, lab instruments, and equipment which has been contaminated by TRU isotopes in the course of the defense nuclear weapons program. TRU wastes are currently stored on-site at the facilities where they are generated, with a vast majority of these wastes being located at 10 different Department of Energy sites.

Until 1970, TRU waste was disposed of in a manner similar to that used for low-level radioactive wastes, usually by burial in shallow earth trenches. In 1970, the Atomic Energy Commission (forerunner of the Department of Energy) determined that TRU wastes should be handled in a more comprehensive fashion, and began siting studies which resulted in the decision to construct the WIPP facility about 26 miles east of Carlsbad, New Mexico. Congress authorized the construction of the WIPP in 1979 as part of the Department of Energy National Security and Military Application of Nuclear Energy Authorization Act (Public Law 96–164).

In 1992, Congress passed the Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102–579) to transfer ownership of the land surrounding WIPP to the Department of Energy (DOE), and authorize DOE to begin underground experiments using TRU waste. In October of 1993, DOE announced that it would forgo on-site testing of waste at WIPP in favor of laboratory testing at the Sandia National Laboratories to determine the site's suitability for disposing of TRU waste. The Environmental Protection Agency (EPA) and the National Academy of Sciences supported DOE's decision to switch from on-site testing to laboratory testing. Because there is broad agreement that in-situ testing will not be necessary to make a site suitability determination, subtitle D would have removed existing statutory hurdles related to in-situ testing that were imposed by the WIPP Land Withdrawal Act.

Further, WIPP is currently subject to four major regulatory schemes: 40 CFR Part 191: Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High Level and Transuranic Radioactive Wastes; 40 CFR Part 194: Criteria for the Certification and Determination of the Waste Isolation Pilot Plant's Compliance with Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High Level and Transuranic Radioactive Wastes; 40 CFR Part 264: Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; and 40 CFR Part 268: Land Disposal Restrictions. The overlapping regulatory restrictions of these requirements have contributed to the lack of progress in opening the repository, and pose the risk of substantial cost increases in operating the facility. According to the Department of Energy's own estimates, complying with the overlapping requirements of 40 CFR Part 268: Land Disposal Restrictions could add up to an additional $500 million in operating costs at WIPP over the life of the facility. EPA has agreed with DOE that the current regulatory structure is superfluous. Subtitle D of the House bill would have removed the unnecessary regulatory burdens that are delaying the opening of WIPP.

Operation of WIPP is a crucial step to the environmental remediation of TRU waste at facilities throughout the DOE weapons complex. Thus, in addition to increasing the cost of compliance at WIPP itself, delays in opening WIPP due to unnecessary regulation have caused increased expenditures for storage costs and have contributed to a lack of movement on cleanup at least at nineteen DOE sites. The Congressional Budget Office has estimated that legislation removing unnecessary regulatory hurdles to the opening of WIPP would save $130 million in outlays over the 1996–2000 period.

Senate amendment

The Senate amendment had no such provision.

Conference agreement

The Conferees agree that legislation removing unnecessary regulation applicable to the WIPP facility is needed and would result in significant savings to the American taxpayer. However, the Conferees agreed not to include Subtitle D of Title 3 of H.R. 2491 in the conference report solely because the $130 million in discretionary outlays saved by the provision could be deemed "extraneous" under section 313(b) of the Congressional Budget Act.

SUBTITLE C—NATURAL RESOURCES

Chapter 1—Department of the Interior Conveyances

SUBCHAPTER A—CALIFORNIA DIRECTED LAND SALE

House bill

Title IX, subtitle C, part 4 of the House bill directs a land conveyance in California in consideration of $501,000 and a liability release.

Senate amendment

The Senate had no similar provision.

Conference agreement

The Conference agreement follows the House bill with minor modifications.

SUBCHAPTER B—HELIUM RESERVES

House bill

The House bill amends the Helium Act of 1960. It authorizes the Secretary of the Interior to enter into contracts with private parties to recover and dispose of helium on Federal lands. Additionally, the Secretary is authorized to store, transport, and sell helium only in accordance with the act.

The bill authorizes the Secretary to store and transport crude helium and to maintain and operate crude helium storage at the Bureau of Mines Cliffside Field, together with related helium transportation and withdrawal facilities.

Under the bill, the Secretary must cease producing, refining and marketing refined helium within 18 months after enactment of this bill.

Further, the Secretary is directed to dispose of all facilities, equipment and other real and personal property held for the refining, producing and marketing of refined helium within two years after the Secretary ceases production, refining and marketing operations. All proceeds from the sale of such facilities shall be applied against the outstanding Helium Fund debt. All costs associated with the sale and disposal, including costs associated with termination of personnel, shall be paid from the Helium Production Fund. Any contract for refined helium in effect on the date of enactment of this bill would stay in effect until the cessation of facility operation. This section also provides for any costs associated with termination of such contracts. Funds for such costs shall be drawn from the Helium Production Fund.

Under the House bill, full cost recovery for helium storage, withdrawal, or transportation services must be provided to the Secretary by users.

Also, the bill provides for the sale of crude helium. It amends section 6 of the 1960 Act to require that those individuals who enter into contracts with Federal agencies to provide helium also purchase an equivalent amount from the Secretary. The Secretary is precluded from making sales of crude helium in amounts that would disrupt the market. All funds collected pursuant to this section shall be deposited against the helium debt, which shall be frozen at the amount outstanding on October 1, 1995. The minimum price of crude helium sold by the Secretary would be determined on the basis of the outstanding amount owed against the debt in comparison with the volume of crude helium in the Cliffside Reservoir. All funds received from the sale or disposition of helium produced under a Federal lease would be deposited against the debt.

The Secretary, no later than 2005, shall commence making sales of the crude helium in the Cliffside Reservoir, and dispose of all such reserves by 2015, except for 600 million cubic feet. Such sales must be made in consultation with the helium industry to provide for minimum market disruption. This subsection ensures repayment of the debt.

Under the House bill, fiscal reporting by the Inspector General of the Department of the Interior is required. This financial statement shall include: a balance sheet for the Helium Operations, the statement of operations, a statement of cash flows, and a reconciliation of budget reports.

Senate amendment

The Senate included a similar provision.

Conference agreement

The House recedes to Senate, with modifications.

One of the most significant modifications agreed to by the conferees was the removal of the GAO audit from the bill. This was due to procedural objections in the Senate. Although the legislative language has been removed, the conferees intend the audit in section 9017 of the House-passed version of the bill, with one change, to be conducted each year.

It has been brought to the conferees' attention that the audit directed in the House bill would be somewhat duplicative of actions currently carried out by the Inspector General. Therefore, the conferees expect the Department of Interior Inspector General to carry out the audit, rather than the GAO as prescribed by the House provisions. Further, the Conferees urge the Department IG to publish, in detail, this audit in its annual review of the Department's activities in its report to Congress. The conferees emphasize the importance of completing the audit and including in the financial statements the information requested in the House bill.

The conference agreement requires the Secretary to dispose of excess property and facilities used for the purpose of producing, refining, and marketing helium no later than 24 months after the cessation of helium refining and marketing.

Chapter 2—Arctic Coastal Plain Leasing and Revenue Act

House bill and Senate amendment

Both the House bill and the Senate amendment contain provisions authorizing and directing the Secretary of the Interior to lease competitively the Coastal Plain of the Arctic National Wildlife Refuge ("Coastal Plain") for exploration and production of oil and gas in a manner consistent with protection of the environment.

Conference agreement

The conferees agreed to adopt the Senate language with several major modifications.

The conferees adopted language clarifying that, because of its expertise in onshore oil and gas leasing, the Bureau of Land Management, in consultation with the Fish and Wildlife Service and other federal agencies, manage the oil and gas leasing program on the Coastal Plain and be responsible for all leasing and management of the leases.

The conferees, in an effort to expedite the leasing process and in recognition of the Congress' long involvement with this issue, added language contained in the House bill which determines that the oil and gas leasing program authorized by this subtitle is compatible with the purposes for which the Arctic National Wildlife Refuge was established and that no further findings or decisions are required to implement this determination.

The conferees agreed to compromise between the House and Senate language to authorize the Secretary to designate up to 45,000 acres of the Coastal Plain as Special Areas and close such areas to leasing if the Secretary determines the lands are of such unique character and interest so as to require special management and regulatory protection. Horizontal drilling beneath the Special Areas is specifically allowed. The conferees expect the Secretary to notify the Committee on Energy and Natural Resources and the Committee on Resources of the House of Representatives ninety days in advance of making such designations. Such notification shall include the reasons and justifications for designating the Special Area.

The conferees agreed to add language contained in the House bill that provides that the sole authority for the Secretary to close portions of the Coastal Plain to oil and gas leasing is provided for in this subtitle.

The conferees agreed to add language from the House bill authorizing and directing the Secretary to convey lands and interests therein to the Kaktovik Inupiat Corporation and the Arctic Slope Regional Corporation to the extent necessary to fulfill their entitlement under the Alaska Native Claims Settlement Act. This conveyance is necessary to maximize revenues by settling any clouds on title to lands on Coastal Plain prior to leasing of the area.

The conferees agreed to modify the Senate language to provide that the rules and regulations necessary to carry out the purposes and provisions of the subtitle be promulgated within fourteen months after date of enactment of the subtitle.

The conferees agreed to modify the Senate language with respect to the Final Legislative Environmental Impact Statement (FLEIS), which was completed in April of 1987, to provide that such statement is adequate to satisfy the legal and procedural requirements under the National Environmental Policy Act of 1969 (NEPA) with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program, to conduct the first lease sale, any subsequent lease sales, and to grant rights-of-way and easements to carry out the purposes of the subtitle.

The conference agreement reflects a compromise between the House and Senate language to provide that the first lease sale shall be comprised of no less than 200,000 acres nor more than 300,000 acres. Subsequent lease sales can be no less than 200,000 acres. The conferees also agreed to changes to the Senate language so that the initial lease sale will occur within 20 months after date of enactment; the second sale would be held no later than 24 months after the first lease sale; subsequent sales would be conducted not later than 12 months thereafter.

The conferees agreed to adopt the House language to authorize the Secretary to close, on a seasonal basis, portions of the Coastal Plain to exploratory drilling activities as necessary to protect caribou calving areas and other species of fish and wildlife.

The conferees agreed to delete the provision in the Senate bill forbidding the flaring of natural gas. The conferees intend for the operator of wells to minimize the flaring of natural gas to emergency situations and other necessary flaring.

The conferees agreed to adopt the House language requiring the holder of a lease to use best efforts to assure that a fair share of employment and contracting, as determined by the level of obligation previously agreed to in the 1974 agreement implementing section 29 of the Federal Agreement and Grant of Right-of-Way for the Operation of the Trans-Alaska Pipeline, be made available for Alaska Natives and Alaska Native Corporations.

The conferees agreed to modify the provisions of the Senate bill relating to the Park and Wildlife Refuge Renewal Fund to capture a portion of the royalty and other revenues from the Coastal Plain (in addition to bonus bid revenue) and expanded the purposes for which the fund can be used. In addition, a cap of $250,000,000 over the life of the fund contained in the House language was imposed.

The conferees also agreed to modify language in the House passed bill to provide for the establishment of a $30,000,000 community assistance fund in the Treasury from the Federal share of the first lease sale. Not to exceed $5,000,000 a year will be made available from that fund to the Secretary to provide local assistance to organized boroughs, municipalities, and recognized Indian Reorganization Act entities which are directly impacted by activities authorized under this subtitle to provide public and social services and facilities required in connection with the exploration and production of oil and gas on the Coastal Plain.

The conferees are aware of concerns raised over the possibility that the revenue sharing formula contained in the legislation could be subject to challenge as inconsistent with the provisions in the Mineral Leasing Act with respect to Alaska which were made as part of the Alaska Statehood Act. The conferees want to emphasize that those concerns are not well founded. The conferees have not sought to alter in any manner the provisions of the Alaska Statehood Act nor the Mineral Leasing Act. The provisions contained in this legislation are the sole authority for the conduct of the leasing program on the Coastal Plain and are self-contained. The revenue sharing provisions contained in this Chapter are unique to this particular area and program and do not alter in any manner the revenue sharing provisions applicable to any leasing program elsewhere in Alaska conducted under the Mineral Leasing Act. The conferees note that the solicitor of the Department of the Interior has concurred in this assessment and that the Governor of the State of Alaska, the President of the Senate and Speaker of the house of the Alaska Legislature also have indicated their acquiescence in this particular formula. The conferees note that in establishing the 1002 area, Congress specifically reserved to itself the decision as to whether to open the area to leasing and the terms and conditions under which such a program would be conducted and do not view the specifics of this particular leasing program, including the revenue sharing provisions, as a precedent for any other area in Alaska.

Chapter 3—Water Projects

SUBCHAPTER A—IRRIGATION PREPAYMENT

House bill

The House had no provision.

Senate amendments

The Senate had a provision repealing section 213(c) of the Reclamation Reform Act to permit prepayment of outstanding construction debt.

Conference agreement

The Conferees agreed to the Senate provision and note that the use of OMB Circular A–129 is solely for the purposes of calculating the discount rate.

SUBCHAPTER B—HETCH HETCHY

House bill

The House-passed bill contained Sec. 9214, which would increase from $30,000 to $8 million the annual payment made by the city of San Francisco under the provisions of the Raker Act (Act of December 13, 1913) for having the Hetch Hetchy system within Yosemite National Park.

Senate amendments

The Senate-passed bill contained a provision which would have raised the annual payment from $30,000 to a minimum of $597,000 pursuant to a formula used by the Federal Energy Regulatory Commission.

Conference agreement

The conferees reviewed all of the relevant factors and concluded that $2,000,000 was an appropriate figure. The managers also were made aware, by the County of Tuolumne, California, which has responsibility for providing infrastructure support to the Hetch Hetchy facility, that there are impacts on local government from the Raker Act. The managers believe that the Congress should examine those concerns.

SUBCHAPTER C—COLLBRAN PROJECT

House bill

The House had no provision.

Senate amendment

The Senate measure contained a provision that would transfer the Collbran Project in Colorado to the local districts.

Conference agreement

The conferees agreed to adopt the Senate provisions with modifications.

The conferees intend that by providing a non-exclusive easement to the Districts and the operators and owners of the associated storage reservoirs, that the Districts will full access to undertake any activities the Districts believe are necessary for project purposes. While the easement is non-exclusive, the conferees intend that in allowing any other use, the Forest Service not interfere with the use of the easement by the District for project purposes.

The conferees agree that the provisions in this legislation dealing with the Collbran Project are unique to that project and are not a precedent for other project transfers.

SUBCHAPTER D—SLY PARK

House bill

The House-passed version contained Sec. 9213, to convey the Sly Park Unit of the Central Valley Project to the El Dorado Irrigation District.

Senate amendment

The Senate-passed version contained no such provision.

Conference agreement

The conferees agreed to adopt the House-passed version, but modified the language to address scoring problems that had been raised by the Congressional Budget Office. The revised language requires the payment for the original construction costs by December 31, 1997.

SUBCHAPTER E—CENTRAL UTAH PROJECT

House bill

The House-passed bill contained Sec. 9211, to authorize the prepayment of certain repayment contracts between the United States and the Central Utah Water Conservancy District.

Senate amendment

The Senate amendment did not contain a prepayment provision specific to the Central Utah Water Conservancy District.

Conference agreement

The conferees accepted the House-passed version, with minor modifications intended to clarify the language.

Chapter 4—Federal Oil and Gas Royalties

House bill

The House bill would amend the Federal Oil and Gas Royalty Management Act of 1982 and the Outer Continental Shelf Lands Act to create a more aggressive framework for the way the Department of the Interior's Minerals Management Service (MMS) and delegated states audit and collect federal oil and gas royalties and other monies owed the United States. These changes would provide for: more efficient audit and royalty collection processes, resulting in collection of additional monies owed to the U.S. and the States within a 6-year limitation period; authority for the Secretary to delegate certain royalty management functions to States, where appropriate, to collect additional royalties due States and the U.S. Treasury, thereby resulting in a more economic royalty management program; records retention requirements for industry to determine royalties due during the 6-year limitation period; more efficient appeals processes at the Department of the Interior, resulting in additional collections from stale disputes between the U.S. and royalty payers; establishment of interest requirements analogous to those of the IRS, thereby encouraging accurate royalty payments; limits on the period within which lessees can make adjustments or request refunds, resulting in additional collections; and pre-payment of royalties on "marginal properties" and other relief to collect royalties on production that might otherwise be abandoned.

Senate amendment

The Senate amendment contained provisions substantially similar to the House version.

Conference agreement

The Conference agreement blends the House and Senate provisions, with modifications to eliminate procedural points of order in the Senate, to clarify that delegated States have a direct role in increasing net receipts due States and the U.S., and to make technical corrections.

Chapter 5—Mining

HARDROCK MINING LAW REFORM

Short title

The Senate bill contains a short title in Sec. 5700. The House bill does not. The House recedes to the Senate position.

Definitions

The Senate bill contains definitions in Sec. 5701. The House bill defines terms where pertinent. The House recedes to the Senate position with amendment by adding and deleting terms as necessary to reflect the conference report language.

Rental payments

The Senate bill contains claim maintenance requirements in Sec. 5702 which extend the current fee of $100 per year per claim and in Sec. 5703 enlarges the "small miner" waiver and exemption from the current ten or fewer claims to twenty-five or fewer claims. The House bill has parallel provisions in Sec. 9505 which include payment of an annual claim maintenance fee which escalates with time to deter speculative holding of claims. Credit for the value of labor performed to explore and develop one's claim(s) may offset not more than 75% of the following year's fee, with a three-year carry forward provision.

The bill managers believe the current claim maintenance fee has caused a precipitous decrease in exploration of the public lands as evidenced by the huge decline in mining claims of record with the Bureau of Land Management from approximately 1,200,000 in 1989 to a preliminary estimate of less than 300,000 in 1995. Exploration expenditures in the U.S. have also been falling while worldwide exploration expenditures are increasing significantly. Without exploration future mines will not be discovered on which royalties will be paid under the terms of this bill.

The Senate recedes to the House position with an amendment to reduce the exploration and development credit to not more than

50% of the claim maintenance fee which is renamed the "claim rental fee." The labor credit does not begin until the year 1999. Further, the amendment changes the timing and amount of the payments to $100 per year per claim for years 1996 through 1998 and $200 per year per claim in 1999 and thereafter, with the aforementioned exploration credit available. The managers believe the consequences of rental payments should be reviewed periodically to ensure hardrock mineral exploration of the public lands remains viable.

Patenting

The Senate bill contains patenting provisions in Sec. 5704 requiring the payment of fair market value of the land within the boundaries of claims for which title passes and the reservation of a royalty interest and a right of title reversion to the United States if the land is used for non-mining purposes, except for such claims as were pending application for patent as of September 30, 1995. The House bill contains similar provisions in Sec. 9502, except that those persons holding valid claims as of the date of enactment have opportunity to seek patents under current law within a two-year transition period (or ten-year period for claims for which access has been denied) by making application for mineral survey or patent. The House bill lacks a "reverter" provision.

The bill managers acknowledge persons holding "valid mining claims," (i.e., for which a discovery of a valuable mineral deposit within the meaning of the mining laws can be demonstrated on the date of enactment of this act, as well as for all location and recordation and payment requirements have been met) have a possessory right to the locatable minerals within their claims, as enunciated by the U.S. Supreme Court to be "property in the fullest sense of the term..." (*Wilbur* v. *U.S. ex rel. Krushnic,* 280 US 306).

Further, the managers believe a prospectively applied royalty may not be imposed upon claim owners who successfully make such showing, otherwise the royalty becomes an obligation in the nature of a severance tax which is levied by a government merely for permission to mine within the government's boundaries without respect to mineral estate ownership. The managers acknowledge many mining claims are held under the principle of pedis possessio, i.e., possession good against rival claimants but not the United States because a discovery of a mineral deposit is lacking. However, the managers believe there are claim holders with valid existing rights and expressly encourage persons holding such claims to assert their rights.

Therefore, the House recedes to the Senate position with an amendment which clarifies that the bill applies to all claims, subject to a vested possessory property right against the government. All mining claims would be subject to royalty, fair market value payment, and the reverter provision except claims for which there is a "vested possessory property right," including those mineral patent applications pending at the Department of the Interior, if such claims meet the requirements of existing law. These claimholders are exempted from the new requirements for the same reason: to protect valid property rights that have ripened because of the operation of the general mining laws. Those claimholders who cannot establish a discovery have no valid existing right and are not eligible to receive patents (and that would continue to be the case under the new law). Other existing claim holders may be able to establish a discovery as well, even though they have not applied for patents. Patenting is not and never has been a prerequisite to mining under the general mining laws. The important consideration is not whether miners have sought patents but whether they can show a "discovery" of a valuable mineral deposit. If they can, they have a constitutionally protected property right that cannot and should not be abrogated by Congress. The managers therefore intend with this subsection to apply the new royalty, reverter, and fair market value provisions in all cases in which they fairly can be applied, but not to those claimholders who have valid existing property rights.

The managers note that if a mineral patent "moratorium" (i.e., a limitation on the use of appropriated funds by the Secretary to accept or process applications or issue mineral patents) is in effect when this chapter is enacted into law, that such limitation is not part of the "general mining laws in effect on the date immediately prior to the date of enactment." This is consistent with House rules which constitute such funds limitation amendments to not violate the prohibition on legislating on appropriations measures.

Further, the House recedes to the Senate position on the reservation of a reversionary interest to the United States with an amendment allowing a right of re-entry to the United States with the direction to the Secretary to renounce such interests in certain situations.

Royalty and abandoned mine reclamation

The Senate bill contains royalty provisions styled as a "net smelter return" in Sec. 5705 with half of receipts to be disbursed to the federal treasury and half to those States whence production occurred, for purposes of reclamation of abandoned locatable minerals mines, and establishes a threshold of $500,000 annual gross proceeds below which royalty is exempted. The House bill contains a "net proceeds" royalty in Sec. 9503 that chiefly differs from the Senate version in allowing the deduction of mining costs from gross proceeds as well as beneficiation, smelting and refining costs which both bills allow, and establishes a threshold of $50,000 annual net proceeds (aggregated from all production subject to the Act) below which royalty is exempted. The House bill exempts claims which have been the recipient of Urban Development Action Grants (UDAG) funds from payment of royalty. The House bill disburses royalty receipts two-thirds to the federal treasury, one-third to the States without regard as to how such funds may be spent.

The bill managers acknowledge the need for a "net" royalty rather than a "gross" royalty in order to levy a fair royalty given the broad class of minerals and methods to which the general mining laws apply, e.g., a net royalty does not favor precious metals versus base metals extraction, open-pit operations versus underground mines, or low-cost labor areas versus remote high-cost areas. A net proceeds royalty conserves resources by not promoting "high-grading" of deposits as do "gross" royalties which clearly affect behavior. Consequently, the Senate recedes to the House royalty terms, including the net proceeds calculation as the threshold for royalty relief.

The bill managers acknowledge the need to offset the loss of State revenues, such as from severance taxes, to be expected from the imposition of a federal royalty. The bill managers also acknowledge the desirability of establishing a fund for the reclamation of public lands impacted by abandoned hardrock mines. Therefore, the Senate recedes to the House position on disbursement of receipts with an amendment to require 10 percent of royalty receipts be disbursed to States without spending mandates, and the House recedes to the Senate position on establishing an AML fund with an amendment to set the disbursement at forty percent of royalty receipts, retaining the Senate provisions of Section 5706 through 5710 respect to the AML funds except for an amendment limiting the eligible areas for reclamation to be public lands only and deleting Section 5709 relating to the use and objectives of the AML funds.

General provisions

The Senate bill contains provisions regarding the effect of the Subtitle on the general mining laws at Sec. 5711, and severability of the provisions of the Subtitle in the event of successful judicial challenge at Sec. 5712. The House has no comparable provisions. The House recedes to the Senate position.

Mineral materials and sodium

The House bill contains provisions for the prospective elimination of the applicability of the general mining laws to so-called uncommon varieties of mineral materials, and the modification of the current system for disposition of mineral materials to provide for stable supply of such materials at Sec. 9504. The Senate bill contains no comparable provisions.

The bill managers acknowledge the untenable situation which exists today for both the federal government and miners claiming alleged "uncommon varieties" of mineral materials. The adjudication of the validity of such claims is far more costly and time consuming for claimant and government alike than is usually warranted by the value of the commodity. Therefore, the Senate recedes to the House position with an amendment which strikes explanatory language while retaining language which expressly amends the 1947 Material Sales Act and the 1955 Surface Resources Act.

The House bill contains provisions affecting the disposition of sodium compounds from federal lands in Subsec. 9504 (i). The Senate bill contains no such provisions. The House recedes to the Senate position.

Chapter 6—Department of the Interior

AIRCRAFT SERVICES

House bill

The House bill did not contain language regarding this provision.

Senate amendment

The Senate amendment contained provisions to reduce the amount of aircraft owned by the Department of the Interior and increase the use of aircraft contract services with private entities.

Conference agreement

The conferees agreed to accept the Senate provision as written. The conferees direct the Secretary of the Interior to contract with private entities for the provision of all aircraft services required by the Department of the Interior (DOI), other than those available from the 13 existing DOI aircraft whose primary purpose is fire suppression. The Secretary is also directed to sell all the aircraft and related facilities owned by the Department, except those specified in the legislation, by September 30, 1998. It is the intention of the Conferees that this sale of assets be made to the highest bidder in each case and that the Secretary seek, to the maximum extent possible, to obtain fair market value for the assets.

Nothing in this section is intended to affect the use of dual-function pilots. The conferees expect that these personnel will continue to carry out their current role with the use of aircraft owned by private entities. The conferees direct the Secretary to report to the Senate Committee on Energy and Natural Resources and the House Resources Committee as soon as possible, and no later than October 1, 1996, identifying aircraft that should not be sold because they are either needed for the primary purpose of law enforcement, are specially equipped, or are not readily available under contract with private entities at a competitive cost. The conferees expect that those committees will review this information and consider the need to amend the requirements of subsection (b).

Chapter 7—Power Marketing Administrations

SUBCHAPTER A—BONNEVILLE POWER ADMINISTRATION

House bill

The House bill provides for the refinancing of certain appropriated debt of the Bonneville Power Marketing Administration.

Senate amendment

The Senate amendment provides for the refinancing of certain appropriated debt of the Bonneville Power Marketing Administration.

Conference agreement

With minor exceptions, the language contained in the House bill is identical to the language contained in the Senate amendment. In the Confederated Tribe of the Colville Reservation Grand Coulee Dam Settlement Act provisions, the Conference Report uses the term “credit” contained in the House bill in lieu of the term “appropriations” which was contained in the Senate amendment. There is no substantive difference between these terms.

The Conferees agreed to drop the study provisions contained in the House bill with the understanding that the Bonneville Power Administration would undertake these studies without a specific statutory requirement to do so. Accordingly, the conferees expect that the Administrator shall undertake a study to determine the effect that increases in the rates for electric power sales made by the Administrator may have on the customer base of the Bonneville Power Administration. Such study shall identify other sources of electric power that may be available to customers of the Bonneville Power Administration and shall estimate the level at which higher rates for power sales by the Administration may result in the loss of customers by the Administration. The Administrator shall also undertake a study to determine the total prior costs incurred by the Bonneville Power Administration for compliance with the provisions of the Endangered Species Act of 1973, and the total future costs anticipated to be incurred by the Administration for compliance with such provisions. It is the Conferee's expectation that the Administrator shall complete and submit to the Congress the results of these studies within 180 days after the date of the enactment of this Act.

SUBCHAPTER B—ALASKA POWER ADMINISTRATION

House bill

The House bill provides for the sale of the Alaska Power Marketing Administration's (APA) assets, and the termination of the APA once the sale occurs.

Senate amendment

The Senate amendment provides for the sale of the Alaska Power Marketing Administration's (APA) assets, and the termination of the APA once the sale occurs. It also provides for the exemption of the two hydroelectric projects from the licensing requirements of part I of the Federal Power Act.

Conference agreement

The Conferees adopted the Senate language with minor changes. The APA's assets will be sold pursuant to the 1989 purchase agreements between the Department of Energy and the purchasers. The Snettisham hydroelectric project and related assets will be sold to the State of Alaska. The Eklutna hydroelectric project and related assets will be sold jointly to the Municipality of Anchorage, the Chugach Electric Association, and the Matanuska Electric Association. For both projects, the sale price is determined by calculating the net present value of the remaining debt service payments the Treasury would receive if the Federal government retained ownership.

This Act and the separate formal agreements provide for the full protection of fish and wildlife. The purchasers, the State of Alaska, the U.S. Department of Commerce National Marine Fisheries Service, and the U.S. Department of the Interior have entered into a formal agreement providing for post-sale protection, mitigation, and enhancement of fish and wildlife resources affected by Eklutna and Snettisham. This Act makes that agreement legally enforceable.

As a result of the formal agreements, the Department of Energy, the Department of the Interior, and the Department of Commerce all agree that the two hydroelectric projects warrant exemption from FERC licensing under Part I of the Federal Power Act. The August 7, 1991 formal purchase agreement states:

"NMFS, USFWS and the State agree that the following mechanism to develop and implement measures to protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat) *obviate the need for the Eklutna Purchasers and AEA to obtain FERC licenses.* (Emphasis supplied.)"

The Alaska Power Administration employs 34 people in the State of Alaska. The purchasers of the two projects have pledged to hire as many of these as possible. For those who do not receive offers of employment, the Department of Energy has pledged it will offer employment to any remaining APA employees, although the DOE jobs are expected to be in the lower-48.

The House-passed bill did not contain any comparable provisions. The Conference Agreement adopts the Senate-passed bill with two material changes.

First, the Conference Agreement provides an exemption for Eklutna and Snettisham from Part I of the Federal Power Act (hydroelectric licensing), not from the entire Federal Power Act. That was intended by the Senate. By making this change, the conferees do not intend to imply that the Purchasers who are already exempt from other aspects of the Federal Power Act will lose such exemptions. The conferees do not intend to imply that by reason of this Act the other parts of the Federal Power Act apply to Eklutna and Snettisham. They apply only if they would have applied in the absence of this Act.

Second, the agreement provides a general rule that upon sale or transfer of any portion of Eklutna or Snettisham from the Purchasers to any other person, the exemption from Part I of the Federal Power Act shall cease to apply to such portion of Eklutna or Snettisham. However, the exemption from Part I will continue to apply if such sale or transfer is from one Purchaser to another Purchaser, as that term is defined in this Act. A loss of the exemption from Part I upon sale or transfer does not automatically trigger licensing under Part I. Licensing will be required only if the circumstances would otherwise require it under Part I. If licensing is not otherwise required under Part I of the Federal Power Act for such portion, it is not required by reason of these provisions. Such sale or transfer, even if it results in the licensing of the portion sold or transferred, does not affect the exemption from Part I for the portion of Eklutna or Snettisham that is not sold or transferred and is retained by a Purchaser.

The first phrase is an exception to this general rule. It provides that a subsequent assignment of interest in Eklutna by the Eklutna Purchasers to the Alaska Electric Generation and Transmission Cooperative Inc. pursuant to section 19 of the Eklutna Purchase Agreement will not result in the elimination of the exemption from Part I of the Federal Power Act for such interest.

The provisions on selection and transfer of Eklutna and Snettisham lands provide that notwithstanding the expiration of the right of the State of Alaska to make selections under section 6 of the Alaska Statehood Act, the State may select lands pursuant to the provisions of this Act and the Eklutna and Snettisham Purchase Agreements. Likewise, it is the intent of this legislation that the Secretary of the Interior shall convey lands selected by the State of Alaska notwithstanding any limitations contained in section 6(b) of the Alaska Statehood Act.

The Conferees agree that the circumstances justifying exemption from licensing under Part I of the Federal Power Act for these two Federally-owned hydroelectric projects are unique, and that they are not a precedent for a similar exemption of any other Federally-owned hydroelectric project in the event that such project were sold. The Conferees agree that in the event that other Federally-owned hydroelectric projects whose generation is marketed by other Federal power marketing administrations are privatized, these circumstances would not justify an exemption from Part I.

Chapter 8—Outer Continental Shelf Deep Water Royalty Relief

House bill

The House bill contained no similar provision.

Senate amendment

The Senate version would authorize the Secretary of the Interior to grant royalty relief on existing Outer Continental Shelf oil and gas leases in the western and central Gulf of Mexico to encourage production. For existing leases, the bill provides relief from royalty payment on a certain number of barrels of oil for leases in water depths of 200 meters or deeper, upon a finding by the Secretary that the leases are not otherwise economic. As water depth increases, the amount of relief provided under the bill would increase commensurately, reflecting that the economics of drilling in deep water increase significantly as water depth increases.

Under the Senate bill, new leases offered for sale in the future would provide terms granting an initial royalty waiver on a specific number of barrels of oil equivalent based on water depth. These new lease terms would be offered for the next seven years. The royalty waiver will increase the dollar value of bonus bids paid upon sale of leases.

The Senate bill provides relief only to OCS leases in the western and central areas of the Gulf of Mexico west of the Florida-Alabama border and does not affect leasing and development off the coast of Florida. The bill does not affect any planning areas or leases subject to pre-leasing, leasing or development moratoria.

Conference agreement

The Conference agreement adopts the Senate provision.

Chapter 9—Exports of Alaska North Slope Oil

House bill

Section 9001 of the House bill authorized exports of Alaskan North Slope (ANS) crude oil; mandated the filing of additional information in an annual report under the Energy Policy and Conservation Act; and required a study by the General Accounting Office (GAO).

Senate amendment

The Senate amendment did not include a similar provision.

Conference agreement

The Senate receded to the House language with an amendment.

The committee of conference recommends authorizing exports of ANS oil under terms substantially similar to the House provision.

Section 13800 amends section 28(b) of the Mineral Leasing Act (30 U.S.C. 185) to authorize ANS exports. Paragraph (1) of section 28(b) of the Mineral Leasing Act, as amended by the conference report, makes inapplicable the general and specific restrictions on such exports in section 7(d) of the Export Administration Act of 1979, (50 U.S.C. App. § 2406(b)), section 28(u) of the Mineral Leasing Act of 1920, (30 U.S.C § 185), section 103 of the Energy Policy and Conservation Act, (42 U.S.C. § 6212), and the Short Supply regulations issued thereunder, unless the President determines (within five months of the date of enactment) that they would not be in the national interest. (Other statutory restrictions on the export of U.S. crude oil rendered either inapplicable or superseded with respect to ANS exports are 10 U.S.C. § 7430 and 29 U.S.C. § 1354, restricting exports of crude oil from the Naval Petroleum Reserve and the outer continental shelf.)

Before making his national interest determination, the President must consider an appropriate environmental review (to be completed within four months of enactment). Consistent with the original 1973 legislation, the President also must consider whether exports would diminish the total quantity or quality of petroleum available to the United States. Finally, the President must consider whether exports are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, in particular in noncontiguous States and Pacific territories.

In a comprehensive report submitted to Congress, the Department of Energy found “no plausible evidence of any direct environmental impact from lifting the ANS crude export ban.” Based on this finding and the weight of the testimony, the provision directs, as the “appropriate environmental review,” an abbreviated four-month study. The environmental review is intended to be thorough and comprehensive, but in light of the prior Department of Energy findings and the compressed time frame, neither a full Environmental Impact Statement nor even a more limited Environmental Assessment is contemplated. If any potential adverse effects on the environment are found, the study is to recommend “appropriate measures” to mitigate or cure them.

In making his national interest determination, the President is authorized to impose appropriate terms and conditions, other than a volume limitation, on ANS exports. The provision takes cognizance of the changed condition of national oil demand and available oil resources. The provision permits ANS crude oil to compete with other crude oil in the world market under normal market conditions. To facilitate this competition and in recognition that the provision specifically precludes imposition of a volume limitation, the President should direct that exports proceed under a general license. In further recognition that some information (such as volume and price) will be needed to monitor exports, the President may wish to impose such after-the-fact reporting requirements as may be deemed appropriate by the Secretary of Commerce.

Given the anticipated substantial benefits to the nation of ANS exports, the conferees urge the President to make his national interest determination as promptly as possible. If the President fails to make the required national interest determination within the statutorily imposed deadline, ANS oil exports are authorized without intervening action by the President or the Secretary of Commerce.

Paragraph (2) requires, with limited exceptions, that ANS exports be carried in U.S.-flag vessels. The only exceptions are exports to Israel under the terms of a specific bilateral treaty that entered into force in 1979 and exports to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency. The conferees concur with the Administration's assessment that the U.S.-flag cargo reservation requirement is consistent with U.S. international obligations and is supported by ample precedent, including, in particular, a comparable provision in the U.S.-Canada Free Trade Agreement as implemented under U.S. law.

Paragraph (3) preserves any authority the President may have under the Constitution and the enumerated statutes to prohibit ANS exports in an emergency.

Paragraph (4) directs the Secretary of Commerce to issue any rules necessary to govern ANS exports within 30 days of the President's national interest determination. In light of the clear benefits to the nation of ANS exports, the conferees urge the Secretary of Commerce to promulgate any rules necessary to implement that determination, including any licensing requirements and conditions, contemporaneously with the determination.

Paragraph (5) provides that if the Secretary of Commerce (after consulting with the Secretary of Energy) later finds that exports have caused sustained material oil shortages or sustained prices significantly above the world level and that the shortages or high prices have caused or are likely to cause sustained material job losses, he must recommend appropriate action, including modification or revocation of the authority to export ANS oil. The President has the discretion to adopt, reject, or modify any recommendation made by the Secretary. In recognition that prices fluctuate and supply patterns change under normal market conditions, the authority of the Secretary is limited to addressing activity that causes the specified sustained unanticipated price and supply effects.

Paragraph (6) provides that administrative action is not subject to notice and comment rulemaking requirements or other requirements of the Administrative Procedures Act.

Subsection 9001 (b) of the House bill, which would have required the Comptroller General (GAO) to conduct a review of the effects, if any, of ANS oil exports on consumers, independent refiners and shipbuilding and ship repair yards on the West Coast and

Hawaii was dropped by the conferees. However, the conferees recommend that GAO complete a report to be submitted four years after the date of enactment. The report should contain a statement of principal findings and recommendations to address job loss in the shipbuilding and ship repair industry on the West Coast and Hawaii, if any, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, if any, that the Comptroller General attributes to ANS exports. The conferees believe that the market should be given a reasonable period of time to operate before submission of the report. The conferees want to be sure the Comptroller General has a solid basis on which to make his analysis and offer any recommendations for the Congress and the President.

Chapter 10—Ski Fees on Forest Service Lands

House bill

The House included a provision that called for the establishment of a new formula to calculate fees paid to the Forest Service by ski area operators.

Senate amendment

The Senate had no similar provision.

Conference agreement

The Senate concurred with the House position with minor modifications. The Conferees agreed on provisions which closely reflect the text of legislation passed by the Senate in 1992.

The Conferees amended the House provision to insert a payment "floor" in the formula. Under the "floor" approach, the Conferees expect that the fee charged each individual ski area for the first 3 years of the transition will be either the fee under the new formula, or the actual fee paid by the area for the year prior to the new formula's implementation, whichever amount is higher. Using this approach will mean that no individual area fee will go down, unless overall business dips by more than 10 percent. In the majority of cases the Conferees expect that areas' fees will increase.

The Conferees expect that no later than five years after the date of enactment of this Act, and every ten years thereafter, the Secretary of Agriculture will submit to the appropriate Senate and House Committees a report analyzing whether the ski area rental charge system legislated by this Act is returning a fair market value rental to the United States together with any recommendations the Secretary may have for modifications in the system.

Chapter 11—National Park Fees

House bill

The House bill had no similar provision.

Senate amendments

The Senate measure contained a provision that established increased caps on National Park admission fees and eliminated a number of prohibitions on implementing fee collection programs at certain park units. The provision would require that 80 percent of the new fees collected be returned to the National Park Service units for annual operating expenses related to visitor services.

Conference agreement

The House concurred with the Senate position with some modifications. The conferees included provisions which would authorize the Forest Service and the Bureau of Land Management to collect recreation use fees at certain locations.

With respect to the collection of fees at units of the National Park Service, the conferees fully expect that fee increases for admission and annual park passes for units of the System, including those units not currently charging such fees, be implemented incrementally over a reasonable period of time so as to minimize, to the greatest extent practicable, rapid escalation of entrance fees. The conferees do not anticipate that the Service will begin charging any of the authorized fee increases described in this legislation at the maximum allowable rate.

In addition, the conferees expect that no later than 30 days after the enactment of this Act, the Secretary of the Interior will submit to the appropriate Senate and House Committees a report on the admission 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 admission fee proposed to be charged at each unit. It is also expected that the report shall also identify areas where such fees are authorized but not collected, including an explanation of the reasons that such fees are not collected.

The conferees agreed that a significant portion of the new fees collected be returned to the areas or units of those land management agencies designated by this Act to augment annual operating expenses related to visitor services. The conferees are very concerned that any increase in fees paid by recreational users translate into increased services to the public. Therefore, the conferees intend to closely monitor implementation of this provision to ensure congressional intent is realized. In order to ensure that fees paid directly benefit users who pay the fees, the conferees have limited the use of the monies to visitor services and facilities. As used in this part, visitor services means services directly associated with the management of recreation visitors to Federal lands, including (but not limited to) such programs as maintenance of facilities which serve primarily visitor recreation use (such as campgrounds, scenic roads, trails, visitor centers and picnic areas), public information and interpretation, wildlife habitat enhancement directly related to public use (such as stream improvement to improve fishing or activities to facilitate watchable wildlife programs), and other activities of personnel assigned predominantly to the management of visitors or public safety programs, but not including costs of regional and Washington headquarters offices and administrative services such as personnel, budget and finance, and procurement.

The Conferees fully expect that the affected Secretaries will, by January 1 of each year, provide to the appropriate Committees of the Senate and the House a list of proposed expenditures from the fund designated by this Act for each unit or area for that fiscal year and a report detailing expenditures, by unit or area, for the previous year.

Chapter 12—Concession Reform

House bill

The House provided a comprehensive reform of concession management policies for 6 Federal land management agencies.

Senate amendment

The Senate had no comparable provision.

Conference agreement

The Senate receded to the House with amendments. The managers expect that each Federal land management agency covered under this title shall implement a program to encourage appropriate development and operation of services and facilities for the accommodation of visitors. The program implemented by each such agency shall consist of actions which—

(1) recognize the importance of the private sector in providing a quality visitor experience on Federal lands by encouraging private sector investments for facilities and services on Federal lands under a fair and competitive process;

(2) establish the basis for an effective relationship between the land management agencies and private business operating on public lands in efforts to serve the public and to protect the resources of these areas;

(3) measure quality and value of services provided by concessionaires and provide incentives for consistent excellence;

(4) ensure a fair return to the Federal Government;

(5) are consistent among the various agencies to the extent practicable in order to increase efficiency of the Federal Government and simplify requirements for concessionaires; and

(6) ensure that concession activities are fully consistent with agency policy and plans.

In order to ensure the consistent high quality of concession services and facilities, the Secretary concerned shall develop a program of evaluations of the concessionaires operating under a concession service agreement who are providing visitor services in areas under the jurisdiction of the Secretary. The evaluations shall be on an annual basis over the duration of the concession service agreement. In developing the evaluation program, the Secretary concerned shall seek broad public input from concessionaires, State agencies, and other interested persons. The evaluation program shall—

(1) include the four program areas of: quality of visitor services provided; resource protection (as applicable); financial performance; and compliance with concession service agreement provisions and pertinent laws and regulations;

(2) define three levels of performance—

(A) good, which shall be defined as a level of performance which exceeds the requirements outlined in the prospectus, but which is attainable;

(B) satisfactory, which shall be defined as meeting the requirements as contained in the prospectus; and

(C) unsatisfactory; which shall be defined as not meeting the requirements contained in the prospectus;

(3) be based on criteria which—

(A) are objective, measurable, and attainable; and

(B) shall include as applicable general standards for all concession operations, industry-specific standards, and standards developed by the Secretary concerned in consultation with the concessioner for each concession service agreement;

(4) be designed in such a manner that the annual evaluation represents the overall performance of the concessioner without weight to matters of limited importance; and

(5) take into account factors beyond the control of the concessioner, such as general market and other economic fluctuations, as well as weather and other natural phenomena, so that such factors may not be used as a justification for denial of performance incentives.

The conferees expect that the Secretary concerned shall annually review the performance of each concessioner and shall assign an overall rating for each concessioner for each year. The procedure for any performance evaluation shall be provided to the concessioner prior to the beginning of any evaluation period. Such procedure shall provide for adequate notification of the concessioner prior to any on-site evaluation and permit a representative of the concessioner to observe the evaluation. The concessioner shall be entitled to a complete explanation of any rating given. If the Secretary's performance evaluation for any year results in an unsatisfactory rating of the concessioner, the Secretary concerned shall so notify the concessioner, in writing. Such notification shall identify the nature of conditions which require corrective action and shall provide the concessioner with a list of corrective actions necessary to meet the standards.

The conferees intend that the Secretary concerned may suspend or terminate a concession authorization if the concessioner fails to correct the conditions identified by the Secretary within the limitations established by the Secretary at the time notice of the unsatisfactory rating is provided to the concessioner. The Secretary may immediately suspend or revoke a concession authorization where necessary to protect the public health or welfare, until the concessioner corrects the conditions which gave rise to such suspension.

In order to ensure that provisions of this part are fully carried out, the Managers expect the administering Secretaries to establish such record-keeping procedures as are necessary, including but not limited to:

(1) The concessioner shall annually submit to the Secretary concerned a statement reflecting total activity in the concession improvement account for the preceding financial year. The statement shall reflect monthly deposits, expenditures by project, interest earned, and such other information as the Secretary concerned requires.

(2) Each concessioner shall keep such records as the Secretary concerned may prescribe to enable the Secretary to determine that

all terms of the concession authorization have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for all other purpose of audit and examination, have access at reasonable times and locations to such records and to other books, documents, and papers of the concessioner pertinent to the concession authorization and all the terms and conditions thereof.

(3) The Secretary of the Interior and the Secretary of Agriculture shall develop a single set of regulations which specify a uniform set of record keeping requirements for all concessionaires with respect to implementation of this part.

(4) The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five years after the close of the business year of each concessioner have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner related to the concession authorization involved.

The managers do not intend the following laws or regulations to apply to concession service agreements and concession licenses issued under this part:

(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251–266).

(2) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)

(3) The Federal Acquisition Streamlining Act of 1994 (Public Law 103–355).

(4) The Brooks Automatic Data Processing Act (40 U.S.C. 759).

(5) Chapters 137 and 141 of title 10, United States Code.

(6) The Federal Acquisition Regulation and any laws not listed in paragraphs (1) through (5) providing authority to promulgate regulations in the Federal Acquisition Regulation.

The managers are aware that successful implementation of this part requires the agencies to develop a fully trained staff of concession professionals and expects the Secretary concerned to specify the minimum training and qualifications required for agency personnel assigned predominantly to concession management duties, including (but not limited to) competency in business management, public health and safety, and the delivery of quality customer services.

OTHER PROVISIONS NOT INCLUDED IN THE CONFERENCE REPORT

GRAZING

House bill

The House bill contains provisions that would: codify Bureau of Land Management (BLM) livestock grazing regulations in existence prior to the current regulations; require that the Forest Service issue regulations substantially similar to those in effect for lands administered by BLM; establish a formula for determining the fee for livestock grazing on public lands; address application of the National Environmental Policy Act to grazing permits and leases; and extend the term of grazing permits and leases from 10 to 15 years.

Senate amendment

The Senate version does not contain such provisions.

Conference agreement

The House recedes to the Senate position.

MAPPING

House bill

The House bill requires the Secretary of the Interior to conduct a surveying and mapping contracting program. In preparation for this contracting program, the bill requires the Secretary to conduct and publish an inventory of surveying and mapping activities to serve as a baseline. Additionally, the bill requires the Secretary to establish a plan that shall be based on the results of the inventory. The plan shall include, but not be limited to, the following actions:

A reduction in surveying and mapping activities by Department personnel that duplicates private sector capabilities;

Reduction in acquisition and maintenance of equipment that duplicates private sector;

A prohibition on Department performance of services for other government entities that can be obtained by contract from the private sector;

Increased use of contracts for requirements created through attrition in the Department;

Enhancement of the Department's role in:

Performing activities that are inherently governmental in nature,

Preparation of standards and specifications,

Research and technology transfer,

Coordination, cost sharing, and administration, and

Establishing goals for contracting.

Additionally, the bill requires annual reports to track program progress. Regarding definitions, the bill defines the terms "surveying and mapping" and "contract" based on current regulations of the U.S. Army Corps of Engineers, the government's largest contractor of these services.

Senate amendment

The Senate had no similar provision.

Conference agreement

The House recedes to the Senate, due to Senate procedural requirements.

It is the conferees' intention that the Secretary of the Interior begin the process of implementing the major provisions of the House provision administratively. It is the conferees intent' that, over the next year, hearings will be held and legislation will be drafted which will incorporate—to the maximum extent possible—components of the legislation passed by the House. The conferees urge the Secretary to report to the House Committee on Resources and the Senate Committee on Energy and Natural Resources by Spring 1996 on the status of the Department's efforts to increase contracting out of mapping and charting activities.

NEED FOR CONTRACTING OUT OF MAPPING

In the Department of the Interior, there are 1827 employees engaged in surveying and mapping (as of September 30, 1994), according to data from the Office of Personnel Management. An Office of Management and Budget (OMB) survey (OMB Bulletin 93–14) estimated $761.7 million in budget authority in the Interior Department for geographic data activities (acquisition, management and dissemination) in FY 1993, and estimated the President's FY 1994 budget request at $801.5 million. In FY 1994, only 212 service contracts for geographic data activities totaling just $18.4 million were awarded to the private sector.

There is a capable and qualified private sector of more than 250 mapping firms and 6,000 surveying firms in the United States. The Interior mapping establishment duplicates the capabilities of the commercial, private sector. Moreover, not only do Federal agencies not contract a significant amount of their own work, but many agencies do work for other Federal agencies, as well as State, local and foreign governments, in direct competition with the private sector.

The conference report from the Senate-House Budget Resolution specifically addressed surveying and mapping, saying, "U.S. Geological Survey conducts research and provides basic scientific and information concerning natural hazards and environmental issues, as well as water, land, and mineral resources. The USGS has three main divisions: the National Mapping Division [NMD], the Water Resources Division [WRD] and the Geologic Division. This proposal assumes that the NMD will aggressively price its products for additional revenue to the Treasury. It also assumes greater contracting out to the private sector, appropriate data gathering, and map and digital data production. Finally, it calls for consolidation of overlapping mapping efforts. Within the WRD, savings are first assumed in the Federal program for such subprograms as global change hydrology and core program hydrology research. Savings could also be achieved by increasing the State and local matching formula for the Federal/State Cooperative Program."

In sum, the Conferees believe that agencies in the Department of the Interior should contract with the private sector where appropriate for surveying and mapping activities. While it is appropriate, proper, and necessary for the Department to be involved in setting standards and specifications, research and technology transfer, and coordination in the area of geographic data, the actual collection of data, through surveying and mapping, is a commercial activity and should be performed by the private sector.

TERRITORIES

House bill

The House measure contained a provision that would terminate further direct annual assistance to the Commonwealth of the Northern Mariana Islands and would also eliminate the Office of Territorial and International Affairs within the Department of the Interior, reduce the number of Assistant Secretaries for the Department by one, and prohibit future discretionary appropriations in certain territory accounts.

Senate amendment

The Senate amendment did not contain any language on this subject.

Conference agreement

The House and Senate authorizing committees have reported, and the Senate has passed, legislation addressing these issues with markedly different approaches. The Conferees agreed the issue would be best resolved by the authorizing committees within the context of that legislation.

INDIAN GAMING

House bill

The House included a provision that increased funding under section 18(a) of the Indian Gaming Regulatory Act from $1.5 million to $2.5 million and eliminate funding for the operation of the Commission.

Senate amendment

The Senate had no similar provision.

Conference agreement

The Conferees agreed to delete this provision.

CONSULTATION

House bill

The House measure contained a provision that amended section 7 of the Endangered Species Act to prohibit federal agencies and applicants for a permit or license from making any irreversible or irretrievable commitments of resources that would foreclose any reasonable and prudent alternative.

Senate amendment

The Senate amendment contained no similar language.

Conference agreement

The conferees agreed to delete this provision.

SKI AREA SALE

House bill

The House measure contained a provision that would direct the Secretary of Agriculture to offer for sale at least 40 ski areas on Forest Service lands.

Senate amendment

The Senate amendment did not contain any language on this subject.

Conference agreement

The Conferees agreed to delete this provision.

FOLSOM

House bill

The House Bill contains a provision declaring that for the purpose of water transfers, the city of Folsom, California, shall be considered a Central Valley Project contractor.

Senate amendment

The Senate version does not contain such provisions.

Conference agreement

The House recedes to the Senate position because of Byrd Rule concerns.

POWER MARKETING ADMINISTRATIONS STUDY

House bill

The House provision repealed the current prohibition on studying the ratemaking or privatization of the Power Marketing Administrations (PMA's). In addition, it provided for a study of the Southeastern Power Administration (SEPA), the Southwestern Power Administration (SWPA) and the Western Area Power Administration (WAPA) for purposes of their ultimate sale. The House bill provided for an independent and experienced private sector firm to serve as an advisor in completing such a study. Because of the ongoing deregulation of the electric utility industry, and the competitive issues which currently exist among providers of electric power, the study also called for a review of tax consequences of potential transfers.

Since federal electric power is generally a by-product of facilities primarily designed and built for water management, the study was set-up to recognize and assume the continued operations and priorities of the projects as they currently exist. In addition, because there are a variety of uses and purposes for facilities that produce PMA power, the study was designed to inventory existing operations and uses so that these operations and uses could be preserved as part of any PMA transfer.

Senate amendment

The Senate had no similar provisions.

Conference agreement

The conferees recognize that there are numerous problems with the existing Power Marketing Administration operations and the underlying power generation facilities. These include: generating units in the SEPA service area that have been off-line and unable to provide power for years, deferred maintenance in many of the underlying facilities which are causing loss of power production, failure to provide current technology which could improve power output and environmental protection, accounting systems which do not fully recover the costs to the federal government from the systems, and inefficient operations stemming from government operating constraints. The conferees believe that Congress should begin addressing these issues, without preconditions as to the ultimate resolution of the issues.

The future solutions, for the issues which have been raised, must deal with the recognition of existing uses, priorities, and operations as well as the rapidly developing competitive electric industry and the impacts on ratepayers. Recently released information indicates that a detailed review and analysis of the PMA's is warranted.

Although only 6% of the nation's electricity is generated and transmitted from these sources, the potential for production from these facilities represents an important component of our domestic energy supply. Accordingly, while the study provision in the House bill was removed because of procedural issues with the Senate, the conferees believe and expect that the Congress will investigate and review the information pertaining to the future of the PMA's including operation and maintenance. The conferees believe that a fully considered review by the Congress should precede development of any specific proposal by the Executive Branch.

The Clinton Administration's 1996 legislative budget proposed to sell all the PMA's to the current customers at the discounted repayment. Such a "one size fits all" approach to the PMA's is simplistic and impractical. In addition to responsibilities to current customers, the federal government has important responsibilities for water management at these facilities as well as to Indian Tribes and to others dependent on the projects. Future Congressional reviews should consider the differing situations and problems facing each of the major components that comprise the PMA's.

House conferees

The conferees are concerned that the American public has made a substantial investment in these facilities and that all citizens should benefit from the rehabilitation and privatization of the PMA's. The conferees believe that those facilities can be operated more efficiently and that any sale can be structured in a way to maximize proceeds while limiting rate increases to the ultimate customers.

In addition to market forces which are likely to prohibit significant rate increases from any sale, studies of these issues should specifically evaluate alternatives that would address rate increase issues. The conferees are not persuaded by the rate concerns enunciated by sale opponents. As a result of the Energy Policy Act of 1992, customers have been afforded the opportunity to purchase their power from any source they wish. Thus, the conferees believe it impractical that a purchaser of a grouping of PMA assets would raise rates substantially because of the risk attendant with that customer leaving and purchasing from other sources in the competitive wholesale power market.

Senate conferees

The Senate conferees share many of the concerns of the House with respect to the present condition of the generating capacity of the PMA's and what the future may hold given sharply reduced budgets for the managing agencies. While consideration of the future of the PMA's is important, the Senate conferees are not prepared to suggest, recommend, or support any particular initiative at this time.

TITLE VI—FEDERAL RETIREMENT AND RELATED PROVISIONS

SUBTITLE A—CIVIL SERVICE AND POSTAL SERVICE PROVISIONS

EXTENSION OF DELAY IN COST-OF-LIVING ADJUSTMENTS IN FEDERAL EMPLOYEE RETIREMENT BENEFITS

House bill

Section 5001 of the House bill continues the current delay in payment of Federal retiree cost-of-living adjustments to April of each year through fiscal year 2002. Under the Omnibus Budget Reconciliation Act of 1993, the effective date for cost-of-living adjustments in Federal employee retirement benefits was delayed from January until April for fiscal years 1994, 1995 and 1996. This section would extend that delay through fiscal year 2002.

Senate amendment

The Senate amendment is identical

Conference Agreement

The Conference agreement includes the language of the Senate and House provisions.

INCREASED CONTRIBUTIONS TO FEDERAL CIVILIAN RETIREMENT SYSTEMS

House bill

Section 5002 provides for increased contributions to both Federal civilian retirement systems. Agencies will be required to increase their contributions to the Civil Service Retirement System (CSRS) for their employees who participate in CSRS. Employees participating in both CSRS and the Federal Employees Retirement System (FERS) will be required to increase their contributions to the systems.

The increase in employee contributions to CSRS will apply to all employees participating in that system including Members of Congress, congressional employees, law enforcement officers, firefighters, Capitol Police, bankruptcy judges, judges for the U.S. Court of Appeals for the Armed Forces, U.S. magistrates, Claims Court judges, and employees of the United States Postal Service. The change in the contribution rate will also apply to employees participating in the Foreign Service retirement systems.

The amount deducted from basic pay for an individual participating in CSRS will be increased above the level in effect on the date of enactment by .25 percent in 1996, by an additional .15 percent in 1997, and by an additional .10 percent in 1998. The increase will then remain constant at .5 percent through 2002.

The bill also requires all Federal agencies, except for the United States Postal Service, to contribute an additional 1.5 percent each year above the percentage an agency is now contributing for each individual employee participating in CSRS. This 1.5 percent increase in employer contributions does not apply to the United States Postal Service which currently contributes the full actuarial cost of each employee's retirement under CSRS.

This section also provides that repayment for any military service between January 1, 1996, and December 31, 2002, for which an employee or Member of Congress would like to receive retirement credit under CSRS, would be at the contribution rate in effect for employees during the period for which such credit is provided.

Likewise, the section provides that repayment for any covered volunteer service between January 1, 1996, and December 31, 2002, for which an employee or Member of Congress would like to receive retirement credit under CSRS would be at the contribution rate in effect for employees during the period for which such credit is provided.

The House bill also requires increased employee contributions from all employees participating in the Federal Employees Retirement System (FERS), including Members of Congress, congressional employees, law enforcement officers, firefighters, Capitol Police, bankruptcy judges, judges for the U.S. Court of Appeals for the Armed Forces, U.S. magistrates, Claims Court judges, and employees of the United States Postal Service. The change in the contribution rate will also apply to employees participating in the Foreign Service retirement systems. and congressional employees. These employees are required to increase their contributions to FERS by .25 percent in 1996, an additional .15 percent in 1997, and by an additional .10 percent in 1998. The increase in the contribution over the percentage an employee currently pays into the system will then remain at .5 percent through 2002.

This subsection provides that repayment for any military service between January 1, 1996, and December 31, 2002, for which an employee or Member of Congress would like to receive retirement credit under FERS would reflect the increased employee contributions resulting in the following repayment percentages: calendar year 1996, 3.25 percent; calendar year 1997, 3.4 percent; calendar years 1998-2002, 3.5 percent.

In addition, this subsection provides that the repayment for any covered volunteer service between January 1, 1996 and December 31, 2002 for which an employee or Member of Congress would like to receive retirement credit under FERS would reflect the increased employee contributions resulting in the following repayment percentages: calendar year 1996, 3.25 percent; calendar year 1997, 3.4 percent; calendar years 1998-2002, 3.5 percent.

This subsection also prohibits agencies from reducing their contributions to FERS for each individual employee by a percentage equal to any percentage increase in individual employee contributions. Under current law, agency contributions would automatically decrease with any increase in employee contributions. The section prohibits the Postal Service and all other Federal agencies from reducing their contributions to FERS.

The effective date for the increased contributions for employees and agencies is the first day of the first pay period beginning on or after January 1, 1996.

Senate amendment

The Senate amendment is substantially the same as the House bill.

Conference agreement

The Conference agreement includes the language of the Senate and House bills with modifications. The percentage by which agencies are required to increase their current contribution rates for their employees who participate in the Civil Service Retirement System, is 1.51% rather than 1.5%. In addition, a distinction is made to ensure that the Washington Metropolitan Airport Authority (WMAA) is not required to pay increased employer contributions on behalf of its employees who participate in the Civil Service Retirement System. The employees of the WMAA are required to make increased contributions to the Civil Service Retirement System or the Federal Employees Retirement System. The WMAA is prohibited from decreasing its contributions to FERS. A drafting error which states the amount the United States Postal Service must contribute on behalf of employees and law enforcement officers is corrected.

The conference agreement adjusts the contribution rates for United States bankruptcy judges, magistrates, Claims Court judges and judges of the U.S. Court of Appeals for the Armed Forces to ensure their parity with federal and congressional employees. The contribution rates for Capitol Police are adjusted to provide parity with other federal law enforcement officers.

FEDERAL RETIREMENT PROVISIONS RELATING TO MEMBERS OF CONGRESS AND CONGRESSIONAL EMPLOYEES

House bill

Section 5003 would reform the pensions of Members of Congress and congressional staff. Under current law, participating Members of Congress and congressional employees contribute a higher percentage of base pay toward retirement. Under CSRS, Members contribute 8 percent, while congressional employees contribute 7.5 percent. Members and congressional employees participating in FERS contribute 1.3 percent. The section amends the contribution rates to bring them into line with those applicable to most General Schedule Federal employees, 7 percent for CSRS and .8 percent for FERS. The accrual rates used to determine the annuities for Members of Congress and congressional employees would be reduced to ensure parity with those of other federal employees. The basic accrual rates for most General Schedule employees (1.5 percent for the first five years of service, 1.75 percent for the next five years, and 2 percent for all remaining years) would also apply to Members of Congress and congressional staff. All service prior to January 1, 1996, for which the higher amount was contributed would be computed using the accrual rate in effect during that service.

The contribution amounts and accrual rates for Members of Congress and congressional employees in CSRS and FERS are amended to conform with those used for the majority of General Schedule. New accrual rates and contribution amounts apply only to service performed on or after January 1, 1996. The changes take effect upon the date of enactment. The Secretary of the Senate and the Clerk of the House are given the authority necessary to prescribe regulations to implement the changes in the retirement benefits of Members of Congress and congressional employees. The House bill also retains the higher congressional accrual rate after January 1, 1996 for Capitol Police who retire at age 55 with 30 years of service.

Senate amendment

The Senate amendment is almost identical to the House bill. The Senate amendment however does not include the provision retaining the higher congressional accrual rate after January 1, 1996 for Capitol Police who retire at age 55 with 30 years of service.

Conference agreement

The Conference agreement includes most of the House language, but adds a provision to clarify that Members of Congress and congressional employees who have paid the higher contribution rate prior to January 1, 1996 would have their annuity computed using the higher accrual rate for that period once they have a total of five years of Member of Congress or congressional employee service. The House Capitol Police language is modified to provide that a member of the Capitol Police who retires as a congressional employee (rather than as a law enforcement officer) would receive the higher accrual rate which was in effect prior to January 1, 1996 for any period of service before that date during which the higher contribution rate was paid.

The conference retains the January 1, 1996 effective date for the reform of Member and staff pensions, but includes an alternate effective date of January 1, 1997 for use only in the event the courts determine that the January 1, 1996 violates the Twenty-seventh Amendment to the Constitution.

Judicial retirement

The conference agreement adds a new section proposed by the House which prospectively adjusts the accrual rate of Title V of the United States Code bankruptcy judges, judges of the U.S. Court of Appeals for the Armed Forces, United States magistrates and Claims Court judges to conform with that of other federal and congressional employees.

REPEAL OF POSTAL TRANSITION PAYMENTS

House bill

The House bill contained a provision (Sec. 5005) to repeal the permanent authorization of transitional appropriations for the United States Postal Service. Under the provision, payments to individuals due compensation from the Federal Employees Compensation Fund would not diminish. The United States Postal Service would instead be required to assume payment without federal reimbursement.

Senate amendment

No provision

Conference agreement

The Conference Agreement adopts the House provision.

SUBTITLE B—PATENT AND TRADEMARK OFFICE

PATENT FEES

House bill

On September 19, 1995, the House Judiciary Committee forwarded legislation that it had approved extending the patent fees surcharge through Fiscal Year 2002. This extension was contained in Title VII of the House bill.

Senate amendment

On September 22, 1995, the Senate Judiciary Committee forwarded legislation that it had approved extending the patent fees surcharge. This extension, title IX of the Senate amendment, is the same provision.

Conference agreement

No change to the Senate or House language was necessary because the two versions were identical.

The action changes Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41) extending the application of the surcharges on all fees authorized by Title 35 of the U.S. Code for Fiscal Years 1999 through 2002. These fees will be credited to a separate account established in the Treasury for Patent and Trademark Office (PTO) activities and will be available to the PTO when appropriated.

In extending the surcharge, the language specifies the maximum amount which the PTO can collect in patent surcharge fees for deposit into the Treasury. The limit is $119,000,000 for each of the four Fiscal Years 1999 through 2002.

SUBTITLE C—GSA PROPERTY SALES

SALE OF GOVERNORS ISLAND

House bill

Section 10402 of the House bill calls for the General Services Administration, notwithstanding any other provision of law, to sell, at fair market value, Governor's Island, New York. This property is currently being used as a Coast Guard facility. The sale of this 171 acre island, in the New York City harbor, is not subject to laws and regulations that normally apply to the disposal of real property by the Federal Government, including requirements of the National Environmental Policy Act, and the National Historic Preservation Act. It is recognized, however, that State and local environmental and historic preservation laws will protect the property upon sale and during any development of the property. The sale is intended for cash. The language provides for the State and City be given right of first refusal to purchase all or part of Governor's Island.

Such right may be exercised either by the State, the city, or both acting jointly. Sale can proceed while environmental remediation is ongoing. If the State or city elects to purchase part of the property, GSA can sell the remainder of the property. GSA would be authorized to fund its cost of disposal of this property from proceeds of the sale. Net proceeds from the sale, estimated to generate approximately $500 million, would be deposited in the miscellaneous account of the Treasury.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

The Senate recedes to the House.

UNION STATION AIR RIGHTS

House bill

Section 10403 of the House bill directs the sale of air rights over the train tracks at Union Station, Washington D.C. These air rights cover approximately 16.5 acres and are bounded by Union Station on the south, 2nd Street NE on the east, K street NE on the north and 1st Street NE on the west. The provision would direct the General Services Administration, notwithstanding any other provision of law, to sell these air rights, at fair market value, in a manner to be determined, during FY 1996. The air rights are a combination of the Department of Transportation and AMTRAK air rights. The provision calls for the transfer of AMTRAK air rights to DOT without compensation to AMTRAK, then GSA would sell the air rights. It is estimated that the air rights would support the development of 2.8 million square feet of office space, plus parking for 1,500 cars.

In 1992 the General Services Administration contracted for an appraisal of these air rights, and concluded that the value, net of the construction of any supporting structure over the train tracks, was $50 million. However, the Congressional Budget Office, in scoring the proposed sale, assigned a value of $40 million. Furthermore, CBO estimated that GSA would require about 18 months to effectively market and sell the air rights, which would include updating an appraisal, and any buyer would require some preliminary determination on zoning the property for future development. Proceeds from the sale would be deposited in the miscellaneous account of the Treasury.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

The Senate recedes to the House.

AVAILABILITY OF SURPLUS PROPERTY FOR HOMELESS ASSISTANCE

House bill

The House bill contained a provision that would increase the flexibility of the General Services Administration in disposing of surplus federal land and buildings. The provision would repeal Title V of the Stewart B. McKinney Homeless Assistance Act, which gives homeless assistance groups a priority right to such surplus property. The provision would give the General Services Administration authority to donate, where warranted by the distinct facts and circumstances of each property disposition, surplus federal land and buildings to private-sector, non-profit groups which provide housing assistance for homeless and low-income individuals. The provision is intended to increase revenues from the sales of such properties while also allowing the GSA to aid local efforts to address the housing needs of homeless and low-income persons.

Senate amendment

There is no comparable provision in the Senate bill.

Conference agreement

The Senate recedes to the House language.

TITLE VII—TRANSFORMATION OF THE MEDICAID PROGRAM

(SEC. 16000–16002 OF HOUSE BILL; SEC. 7190–7199 OF SENATE AMENDMENT)

Background and Need for Legislation

Established by President Lyndon Johnson in 1965, Medicaid is a joint Federal–State matching open-ended entitlement program that pays for medically necessary health care services provided to eligible beneficiaries by qualified providers. There are Medicaid programs in all States except Arizona, which runs a similar medical assistance program under a Federal waiver. (Federal funds for the Arizona program come from the Medicaid budget.) In addition, the Medicaid program is operated in the District of Columbia and U.S. territories, such as Puerto Rico and Guam.

According to the Congressional Budget Office (CBO), the Medicaid program will cost $156.5 billion in Fiscal Year 1995. Of this amount, the Federal government will be responsible for an estimated $89.2 billion. This expenditure represents a 11,050 percent increase over the program's initial cost to the Federal government of $800 million in Fiscal Year 1966. Since 1990, Medicaid has been the fastest-growing segment of the Federal government's budget, with costs soaring at annual rates as high as 31 percent. Placed in broader context, the Medicaid program's average annual rate of growth since 1990 has been four times that of private sector health care costs, which are rising at roughly 4–5 percent annually. Although CBO projects Medicaid spending will rise at a comparatively "stable" rate of 10 percent per year, at that rate total program costs will double by the year 2002 absent reform. As detailed in the section entitled "Program Growth versus Program Cuts" below, the MediGrant plan replaces the Medicaid program's unsustainable cost spiral with considerable and consistent funding to the States.

Medicaid's extraordinary rate of growth has made it the single largest item in many State budgets. According to the testimony of

Governors and Medicaid officials appearing before the Committees of Congress, States have been compelled by the program's cost to restrict investment in other critical human services, including child welfare, education, mental health, and public safety. As described in the "Fiscal Impact of Medicaid Growth on the Federal and State Budgets" section below, the program's cost has been frequently underestimated and continues to threaten the budgetary stability of virtually every State.

Medicaid was also intended to operate as a joint Federal–State matching entitlement program providing medical assistance for low-income persons who are aged, blind, disabled, members of families with dependent children, and certain other pregnant women and children. Accordingly, States were permitted to design and administer their own programs, subject to specified Federal guidelines. In reality, however, the current Medicaid program hardly resembles that which was originally intended. Instead of allowing State and local officials the flexibility to best administer Medicaid, the Federal government created an extensive "one-size-fits-all" maze of Federal mandates and administrative requirements. The nature of this centralized approach to program administration is described in the "Medicaid Micromanagement" section below.

Finally, the operational and administrative inflexibility of the current Medicaid program has prevented States from developing innovative and cost-efficient mechanisms designed to meet the health care needs of their residents. Instead, they have been forced to shoulder the uncontrollable costs of what has become a rigid and ineffective health care program. The program's centralized micromanagement, complex bureaucratic requirements, and outdated service delivery is often cited by the States as impeding their ability to provide the quality health coverage, patient responsiveness, and efficient administration common in the private sector. As a result, States have long sought enhanced operational flexibility so that they can better meet the health care needs of their low-income residents. The current program's complex system of waivers and the anticipated impact of the MediGrant plan's flexibility is described below in the section entitled "Fostering Greater State Innovation."

The fiscal impact of medicaid growth

During the debate on the new MediGrant Program, the assertion has been repeatedly made that this legislation "cuts" health care spending for low-income people. This assertion is categorically false. Over the seven year period ending in Fiscal Year 2002, the average growth rate in the program is a guaranteed 5.2 percent annual increase. Total Federal spending between Fiscal Years 1996–2002 will total $791.1 billion. Total Federal expenditures in fiscal year 2002 will be $127.4 billion, a 43 percent cumulative increase over fiscal year 1995.

Federal expenditures on the Medicaid program during the past seven years have contributed significantly to the Federal budget deficit. However, Federal costs—while great—are only half the story. The States have been faced with even more extraordinary fiscal pressures because Medicaid mandates have made health care the fastest growing area of State budgets. Since almost all States are Constitutionally required to annually balance their budgets, the Medicaid financial squeeze has had dramatic effects.

The table below, prepared by the National Association of State Budget Officers (NASBO), documents the extraordinary growth of Medicaid expenditures as a percentage of State expenditures. In 1987, Medicaid represented approximately 10.2 percent of all State expenditures. By 1991, Medicaid's State spending share had risen to 14.2 percent, and by 1994 it was a striking 19.4 percent of all State spending, nearly double the percentage just seven years earlier.

MEDICAID SPENDING AS A PERCENTAGE OF TOTAL STATE SPENDING

	1987	1988	1989	1990	1991	1992	1993	1994
Medicaid Spending	10.20	10.80	11.30	12.50	14.20	17.50	18.40	19.40
Non–Medicaid Spending	89.90	89.20	88.70	87.50	85.80	82.50	81.60	80.60

Source: National Association of State Budget Officers, 1994 State Expenditure Report.

As State Medicaid spending has experienced uncontrollable rates of growth, other critical State funding initiatives have suffered commensurately. The table below, also prepared by NASBO, documents the decline in State spending for elementary and secondary education, higher education, welfare, and transportation due to the growth in Medicaid. Based on NASBO data, State expenditures for elementary and secondary education declined 11 percent between 1987 and 1994; State higher education spending dropped 8 percent over the same time period; State welfare spending experienced a 13 percent decrease; and State investment in public transportation declined 16 percent. On the other hand, during the 1987–1994 time period, Medicaid spending increased by more than 90 percent!

SECTORAL PROGRAM SPENDING, PERCENTAGE OF TOTAL STATE SPENDING

	1987	1988	1989	1990	1991	1992	1993	1994
Elementary/Secondary Ed.	22.80	23.00	23.40	22.80	22.00	21.10	21.20	20.30
Higher Education	12.30	11.80	12.00	12.20	11.50	10.90	10.60	10.50
Welfare	5.20	5.30	5.10	5.00	5.30	5.00	4.90	4.50
Medicaid	10.20	10.80	11.30	12.50	14.20	17.50	18.40	19.40
Transportation	10.60	10.30	10.10	9.90	9.40	9.10	9.00	8.90

Source: National Association of State Budget Officers, 1994 State Expenditure Report.

This data clearly reveals why many States officials have described Medicaid mandates as the worst of all the Federal unfunded mandates placed on the States. As these mandates were enacted into law through budget reconciliation in the late 1980s and early 1990s, they created havoc with State budgets and ultimately drained State funds away from education and welfare programs.

Federal and state budgetary havoc within budget reconciliation

One of the most perplexing issues concerning the unconstrained fiscal growth of Medicaid is the manner in which it was achieved. Most of the Medicaid mandates were enacted through reconciliation bills which were supposed to be budget-cutting vehicles.

How was this accomplished? In the days of the Gramm–Rudman–Hollings Budgetary Act, it was accomplished by "budgetary tricks.'' For example, in the Concurrent Resolution of the Budget for fiscal year 1990 (H. Con. Res. 106), $200 million of new budget entitlement authority became available for fiscal year 1990 for Medicaid spending. With this $200 million, the House Energy and Commerce Committee was able to report out five new mandated Medicaid expansions by slipping effective dates on some of the pending provisions so that only one calendar quarter's worth of spending would occur in fiscal year 1990. By this ''budgetary trick'', the Medicaid provisions technically met the budget target in the Budget Resolution. However, in the out-years, these five Medicaid provisions would cost additional billions of dollars. In 1989, the Office of Management and Budget (OMB) estimated that, taken together, these Medicaid provisions would increase Federal spending by approximately $8.6 billion over a five-year period.

Another perplexing issue in the enactment of Medicaid mandates has been the inability of the Congressional Budget Office (CBO) to provide accurate estimates of the projected costs of these laws. The table below documents the astounding inaccuracies in the CBO analysis of a number of Medicaid mandates enacted into law in the Omnibus Reconciliation Act of 1989 (OBRA 1989).

CBO OBRA 1989 MEDICAID MANDATES—ESTIMATES VS. ACTUAL FLORIDA EXPENDITURES FY1991

[In millions of dollars]

	CBO scoring for all states	Florida Federal expenditures
Mandatory Coverage of Pregnant Women	270	31
ESPDT	25	63
Payment for federally qualified health centers	15	8
Payment for obstetrical and pediatric services	11	4
Total	321	106

Florida represents 3.8% of all Federal Medicaid Expenditures—but accounted for 33% of Total Estimated Expenditures.

This table lists four major Medicaid mandates enacted into law in 1989: mandatory coverage of pregnant women up to 133 percent; mandatory coverage of early and periodic screening, diagnostic, and treatment services (EPSDT); enhanced payment for health care centers; and enhanced payments for obstetrical and pediatric services.[1] The first column is the official CBO estimate for all Federal expenditures for these benefits in Fiscal Year 1991. The second column is the actual Florida Federal expenditures provided by the Florida Medicaid Director at that time.

First, compare the totals for Fiscal Year 1991. The CBO calculated that the total Federal expenditures for these four mandates would be $321 million in fiscal year 1991 for all States. However, Florida's actual total was a whopping $106 million. Since Florida represents only 3.8 percent of all Federal Medicaid expenditures, the enormity of this error is obvious.

[1] In a 1990 official policy document of the National Governors' Association (NGA) entitled ''Short–Term Medicaid Policy,'' the nation's Governors identified several of these mandates as particularly troublesome. In this NGA official document, they asked for relief from mandates in general and specified detailed changes to the EPSDT benefit. Governor Florio of New Jersey chaired the NGA Health Care Task Force which produced this policy, and then–Governor Bill Clinton was a member of the Task Force.

With regard to the CBO cost estimate of the EPSDT benefit, the picture is even more disturbing. Incredibly, the CBO estimated that the total Federal expenditures for all States would be $25 million for fiscal year 1991. The State of Florida alone spent $63 million in fiscal year 1991 to comply with this mandate, or more than double the CBO official estimate![2]

If one projects the Florida cost experience for these OBRA 1989 mandates to the entire nation, the analysis leads to a disturbing conclusion. While CBO projected expenditures of $323 million in fiscal year 1991, estimated Federal expenditures were closer to $2.8 billion. Though forecasting is not an exact science, an error in the range of nearly 900 percent is truly indefensible. This staggering forecasting error not only contributed to the growth of the Federal budget deficit but was a devastating fiscal blow to the States.

Medicaid Micromanagement

According to many State officials, the explosion of Medicaid spending is due in large part to Congressional and Executive directives. As noted above, Federally mandated eligibility changes over the last decade fueled the expansion of the Medicaid-eligible population and the cost of the program. Although States have the discretion of supplementing Medicaid's mandated coverage standards, the Federal government frequently expanded the scope of these standards. As a result, States have been compelled to increase their spending levels in order to receive their share of Federally-matched Medicaid spending.

One of the most frequently heard State complaints regarding the Medicaid program concerns micromanagement by the Health Care Financing Administration (HCFA). At the Federal level, Medicaid is administered by HCFA which, through a network of regional offices, is supposed to work with State Medicaid departments to ensure appropriate management of the Medicaid program. However, the reality of HCFA–State relations has been described by many State officials as less a matter of coordinated cooperation than as an example of Federal micromanagement in State affairs.

When questioned during the hearings on the Medicaid program, State Governors and Medicaid directors pointed to program mandates as evidence of excessive Federal interference. In the House Commerce Committee's June 8, 1995 hearing, the Subcommittee on Health and Environment heard from Florida Governor Lawton Chiles, Illinois Governor Jim Edgar, Michigan Governor John Engler, Tennessee Governor Don Sundquist, and Utah Governor Mike Leavitt. Speaking for many of his colleagues, Governor Edgar expressed grave concern over the impact on other critical human service priorities of spiraling Medicaid spending resulting from Federal Medicaid micromanagement.

"The Federal government has micromanaged the program by heaping mandate after mandate upon the States. It has told us

[2] In 1990, the American Public Welfare Association (APWA), conducted a study of the effect of the EPSDT expansions of OBRA 1989. Preliminary results from just 13 states showed an increase of $468 million in State and Federal spending in fiscal year 1991. The States responding were: Alabama, Alaska, Arizona, Florida, Idaho, Maryland, Missouri, North Dakota, Oregon, South Dakota, Texas, Utah, and Wisconsin. The APWA study advises the reader to "be advised that this total figure is likely to increase as more states complete a budget analysis." Note that the two largest Medicaid programs—California and New York—were not included in this study.

whom we must serve and dictated how we must provide the service without regard to cost. In 1966, the first year of Medicaid, Illinois spent $87 million on the program. This year, we will spend 64 times that much, or nearly $6 billion. In Illinois, the tab for recent Federal mandates alone tops $480 million this year.''

Governor Engler cited the Boren Amendment, which requires States to pay ''reasonable rates'' for nursing and hospital care, as one of many Federal directives that have served to impose substantial burdens on State Medicaid programs. Intended to aid States in their efforts to contain program costs, the Boren Amendment's vague payment standard resulted in numerous lawsuits and the imposition of arbitrarily higher reimbursement levels.

''Creeping micromanagement has entangled us in a briar patch of perverse incentives that are costing taxpayers dearly. One example . . . is a direct result of the Boren Amendment: in 1989, Michigan Medicaid costs in a nursing facility were $35 a day. In 1994, they were up to $57 a day. We are paying a lot more money, but our patients are not getting a lot more care.''

Governors Edgar and Engler are neither the first nor the only State Executives to describe to Congress the burdens of HCFA and the Medicaid program it administers. On December 8, 1990, then–Governor Bill Clinton told the House Government Operations Committee that 'Medicaid used to be a program with a lot of options and few mandates—now, it's just the opposite.'

Not surprisingly, many States have sought to take advantage of one of the only forms of relief available to them: waivers granted by the Federal government. Faced with the bureaucratic complexity and escalating costs of the Medicaid program, States have sought to make more efficient use of Medicaid dollars by such means as managed care. In many instances, the savings realized from these measures have been used to help fund program expansions as part of State initiatives to extend coverage to uninsured individuals. Since significant use of managed care in Medicaid is not permitted under current Medicaid rules, States have sought waivers of statutory and regulatory requirements from the Secretary of Health and Human Services.

Currently, Federal Medicaid law makes two basic types of waivers available to the States. Section 1915 of the Social Security Act provides for ''program waivers,'' which allow States meeting specified conditions to operate certain types of special programs that are listed in the statute. Section 1115(a) provides much broader authority to grant ''demonstration waivers,'' under which nearly any provision of Medicaid law may be waived to allow States to experiment with program improvements.

The experience of those States with waivers permitted under Sections 1915 and 1115(a) has been mixed. While any relief from the Medicaid program's many restrictions is certainly appreciated by the States, the waiver process itself is a source of great dissatisfaction. The process by which States seek Section 1115 waivers is particularly complex and costly. In order to comply with HCFA's numerous application requirements, States must devote staff time and money to the process—resources that could be used to provide health care services to low-income State residents. When the application is complete, it typically contains enough paper to measure almost three feet in height.

Unfortunately, States still face often insurmountable obstacles to flexibility even after completing their waiver applications. To date, only ten of an estimated twenty-three Section 1115 waiver applications have been approved by HCFA. In addition, the length of Federal waiver application review averages an estimated twelve months.

According to Ohio's Medicaid Director, Arnold Tompkins, who appeared before the Health Subcommittee of the House Commerce Committee on June 22, 1995, HCFA's slow process for reviewing State waiver applications is largely due to the substantial flaws of the waiver process itself:

"Five months into the [waiver] process we learned that our approach to budget neutrality . . . was considered off-base by HCFA. We spent the summer redesigning the budget to meet HCFA's concerns. But this redesign was still not enough. In the ninth month we were told that the redrawn budget had to be redrawn again because Federal thinking had changed about how budget neutrality should be demonstrated."

Fostering Greater State Innovation

All across the nation, States are working to improve the quality, effectiveness, and efficiency of the health care assistance they provide to their low-income residents. However, they have little of the operational or administrative flexibility they need to make their medical assistance programs more responsive and efficient. As a result, Governors and other State officials have long complained that Medicaid has served as an obstacle, rather than as an opportunity, to developing innovative health care delivery strategies.

This is particularly difficult for many States to understand, given the success achieved by the relatively few States that have received waivers. For example, HCFA data reveals that States have achieved significant program efficiencies by means of waiver-facilitated managed care initiatives. In particular, Section 1915(b) waivers have enabled some States to establish limited managed care programs. Based on State reports to HCFA, the General Accounting Office has calculated that the national weighted average of the savings realized from such Medicaid managed care initiatives is an estimated 9.4 percent. In other words, States were able to serve the populations enrolled in these programs using almost 10 percent fewer dollars than required by the traditional Medicaid program.

According to State officials, the lesson to be drawn from such experiences is clear: if Medicaid is to be substantially improved and the growth rate of its costs brought under control, States must be empowered to restructure their Medicaid programs. They argue that the millions of low-income Americans who need health care assistance will be more effectively and efficiently served only when Governors and State Legislators are given the flexibility to tailor Medicaid to meet the unique conditions in their States.

In light of the inflexibility of the current Medicaid program and the ineffectiveness of its waiver process, many States have petitioned Congress for significant Medicaid reform. In fact, State Governors have forged a close working relationship with the 104th Congress in an effort to develop the MediGrant block grant reform initiative. Indeed, the Congress was advised by State Governors, Medicaid Directors, and other program experts to replace the current Medicaid program and its lengthy waiver process with a block grant reform initiative.

Described as the most effective means for transforming Medicaid into a truly State-driven program, block grants would give States unprecedented operational and administrative flexibility. According to State officials, a block grant program would enable States to develop innovative service delivery strategies to meet the health care needs of their low-income residents. In other words, Medicaid block grants would free States in a manner far surpassing any flexibility they may enjoy under a waiver. In fact, under the proposed block grant reform initiative, Medicaid would become the State-run program it was initially intended to be. In place of the current rigid, bureaucratic, and often inadequate service delivery system, States would be able to develop health service strategies tailored to match the differing characteristics of their communities. These can include capitation and managed care, enhanced maternal, child, and mental health care initiatives, and insurance premium subsidy programs.

Medicaid block grants would also create compelling incentives for States to achieve unprecedented program efficiency. Currently, the Medicaid program effectively penalizes States which save Medicaid resources. On average, 57 percent of all State savings revert to the Federal government, not the States that made the savings possible. Under a block grant approach, States would be able to utilize the full value of any savings they achieve because they would be free to reinvest those resources into better service delivery, expanded benefits, and new program innovations.

The contribution that the flexibility of block grants can make to State medical assistance programs may be ascertained by examining current State initiatives. While ongoing State innovations have been severely restricted by the current Medicaid system, they are indicative of how States would respond to the flexibility of a Medicaid block grant. As has been proven by initiatives that have been undertaken nationwide, State and managed care provider innovations appear capable of substantially improving Medicaid service delivery and administration while finally bringing an end to the program's explosive rate of growth.

PURPOSE; STATE PLANS (SEC. 2100 OF MEDIGRANT; SEC. 2100 OF MEDICAID)

House bill

The bill would create an entitlement to States, called MediGrant, under Title XXI of the Social Security Act for block grants to enable States to provide medical assistance to low-income individuals and families. A State would be required to provide the Secretary with a plan that sets forth how the State intends to use the funds provided to provide medical assistance. An approved plan would continue in effect unless and until (1) the State amends the plan, (2) the State terminates participation in the program, or (3) the Secretary finds substantial noncompliance of the plan with the program's requirements.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

PART A—OBJECTIVES, GOALS, AND PERFORMANCE UNDER STATE PLANS

DESCRIPTION OF STRATEGIC OBJECTIVES AND PERFORMANCE GOALS (SEC. 2101 OF MEDIGRANT; SEC. 2101 OF MEDICAID)

House bill

A State would be required to include in its MediGrant plan a description of its strategic objectives and performance goals for providing health care services, and the manner in which the plan is designed to meet the objectives and goals. Goals and objectives related to rates of childhood immunizations and reductions in infant mortality and morbidity would be required. With regard to other objectives and goals, the State could consider factors such as priorities for providing assistance to low-income populations, priorities for general public health and health status for low-income populations, the State's financial resources and economic conditions, and the adequacy of the State's health care infrastructure. To the extent practicable, a State would be required to establish one or more performance goals for each strategic objective and describe how performance would be measured and compared against goals. Strategic objectives would be required to cover a period of at least 5 years and would have to be updated and revised at least every 3 years. Performance goals would have to be established for dates not more than 3 years apart.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House provision.

ANNUAL REPORTS (SEC. 2102 OF MEDIGRANT; SEC. 2102 OF MEDICAID)

House bill

By March 31 (beginning in 1998), each State with a MediGrant plan in effect for the preceding fiscal year would be required to submit a report to the Secretary and the Congress on program activities and performance for that Federal fiscal year. Each report would be required to include data on the following: (1) aggregate expenditures for each category of eligible individuals, expenditures by each category of eligibles for covered services provided on a fee-for-service basis, expenditures for payments to capitated organizations by each category of eligibles, and administrative expenditures; (2) utilization of services, including summary statistics, for each category of eligible individuals, of items and services provided on a fee-for-service basis and a summary of data reported by capitated health care organizations; (3) achievement of performance goals including actions to be taken in case a goal was not met; (4) program evaluations; (5) fraud and abuse and quality control activities; and (6) plan administration, including a description of the roles and responsibilities of State entities responsible for administering the program and organization charts for each, a description of any interstate compact entered into, and citations to State law and rules governing the State's activities under the program.

With respect to inpatient hospital services provided on a fee-for-service basis, the plan must include a description of the average amount paid per discharge compared to either the average charge, or to the State's estimate of the average amount paid by commercial insurers. For subsequent fiscal years, expenditures and utilization reports would be required to fit the reporting format specified by the MediGrant Task Force established under Title XXI. Categories of eligible individuals would be children, blind or disabled adults under age 65, persons 65 or older, and other adults.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate amendment with modifications.

PERIODIC, INDEPENDENT EVALUATIONS (SEC. 2103 OF MEDIGRANT; SEC. 2103 OF MEDICAID)

House bill

Beginning in fiscal year 1998 and at least every third year thereafter, each State would be required to provide for evaluation of the operation of its MediGrant plan, conducted by an entity that is responsible neither for submission of the State plan nor for administering any activity under the plan.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

DESCRIPTION OF PROCESS FOR STATE PLAN DEVELOPMENT (SEC. 2104 OF MEDIGRANT; SEC. 2104 OF MEDICAID)

House bill

State plans would be required to include a description of the process for development and implementation of the plan.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

CONSULTATION IN STATE PLAN DEVELOPMENT (SEC. 2105 OF MEDIGRANT; SEC. 2105 OF MEDICAID)

House bill

Before submitting a plan or amendment to the Secretary, each State would be required to provide a public notice with a description of the plan or amendment, a means for the public to inspect or obtain a copy of the plan or amendment, and an opportunity for submittal and consideration of public comments. This provision would apply except when the State submitted a revision of a plan or amendment in response to a determination of disapproval by HHS.

Each State would be required to establish and maintain an advisory committee for consultation in the development, revision, and monitoring the performance of the plan. Such consultation would include the development of strategic objectives and performance goals, the annual report, and the research design for evaluating the State's plan operations. Members of the advisory committee should represent different geographic regions of the State although proportional representation would not be required. A State would be permitted to establish more than one advisory committee, including committees that represent the interests of specific population groups, provider groups, or geographic areas.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision. It is the intent of the Conferees that the composition of the advisory committees be chosen in a manner that assures geographical diversity.

TASK FORCE (SEC. 2106 OF MEDIGRANT)

House bill

The Secretary of HHS would be required to establish a MediGrant Task Force consisting of 6 members appointed by the chair of the National Governors Association (NGA) and 6 appointed by the vice chair of the NGA. The Task Force would be assisted by an advisory group composed of one representative from each of the following associations: National Committee for Quality Assurance; Joint Commission for the Accreditation of Healthcare Organizations; Group Health Association of America; American Managed Care and Review Association; Association of State and Territorial Health Officers; American Medical Association; American Hospital Association; American Dental Association; American College of Gerontology; American Health Care Association; and associations identified by the Secretary as representing the interests of disabled individuals, children, the elderly, and mentally ill individuals. The Task Force would be required to: (1) specify the format of expenditure and utilization summaries by December 31, 1996; (2) study and report to Congress and the States by April 1, 1997, with recommendations on models for strategic objectives and performance goals; methodologies for measuring and verifying each objective or goal recommended; an assessment of the usefulness to States of quality assurance safeguards, utilization data sets, and accreditation programs used in the private sector; and designs and methodologies for providing for independent evaluations. States would not be required to adopt any of the objectives or goals suggested by the Task Force. The Agency for Health Care Policy and Research, or the Secretary, would be required to provide administrative support for the Task Force.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House provision. However, it is the intent of the Conferees that the Secretary of HHS establish a MediGrant Task Force. It is the intent of the Conferees that the MediGrant Task Force consist of 6 members appointed by the chair of the National Governors Association (NGA) and 6 appointed by the vice chair of the NGA. The Task Force would be assisted by an advisory group composed of one representative from each of the following associations: National Committee for Quality Assurance; Joint Commission for the Accreditation of Healthcare Organizations; Group Health Association of America; American Managed Care and Review Association; Association of State and Territorial Health Officers; American Medical Association; American Osteopathic Association; American Hospital Association; Association of American Medical Colleges; American Dental Association; American College of Gerontology; American Health Care Association; National Healthcare Anti-Fraud Association; National Association of Health Data Organizations; American Academy of Actuaries; National Association of State Medicaid Directors; and associations identified by the Secretary as representing the interests of disabled individuals, children, the elderly, and mentally ill individuals.

It is the intent of the Conferees that the Secretary, through the work of the Task Force: (1) specify the format of expenditure and utilization summaries by December 31, 1996; (2) study and report to Congress and the States by April 1, 1997, with recommendations on models for strategic objectives and performance goals; methodologies for measuring and verifying each objective or goal recommended; an assessment of the usefulness to States of quality assurance safeguards, utilization data sets, and accreditation programs used in the private sector; and designs and methodologies for providing for independent evaluations. It is the expectation of the conferees that the Task Force will develop recommendations by which States may respond to needs of the chronically mentally ill, particularly those individuals with psychotic symptoms, such as schizophrenia, schizoaffective disorder, manic depression disorder, and autism, as well as severe forms of other mental disorders, such as major depression, panic disorder, and obsessive compulsive disorder. It is the intent of the Conferees that States may, but should not be required to, adopt any of the specific objectives or goals suggested by the Task Force.

PART B—ELIGIBILITY, BENEFITS, AND SET–ASIDES

GENERAL DESCRIPTION OF ELIGIBILITY AND BENEFITS (SEC. 2111 OF MEDIGRANT; SEC. 2111 OF MEDICAID)

House bill

The State plan would be required to include a description of (a) the eligible population, including categories, duration of eligibility, financial standards and methodologies, and standards for the protection of income and resources of the community spouses of institutionalized beneficiaries; (b) duration and scope of covered services, including variations by population group; (c) the delivery method, such as use of vouchers, fee-for-service, or managed care arrangements; (d) required beneficiary cost-sharing, including any responsibility of parents and the spouses of recipients; (e) any incentives or requirements to encourage appropriate utilization; and (f) any payment provisions for community health centers, public hospitals, and certain hospitals serving a high share of low-income patients, along with a description of where and how enrollees previously using these facilities under Medicaid would obtain services (if these facilities were no longer available to them). A State using a fee-for-service system would also have to describe how it determines provider qualifications and sets reimbursement rates. The MediGrant plan would have to include coverage of immunizations for eligible children, in accordance with a schedule developed by the State health department in consultation with those responsible for administering the MediGrant plan. Payment rates for rural providers would have to equal those for comparable non-rural providers, except that States could offer incentives for providers in underserved areas. No MediGrant plan could deny or exclude services on the basis of a preexisting condition. If a State contracted with a capitated organization or other entity and allowed the organization to impose preexisting condition exclusions, the State would have to provide alternate coverage for any covered services denied as a result. MediGrant plans would be prohibited from requiring an adult child of moderate means to contribute to the cost of nursing facility and other long-term care services for the child's parent.

Senate amendment

Each Medicaid plan would have to meet the following requirements: (1) be designed to serve all political subdivisions in the State; (2) provide for making medical assistance available to any pregnant woman or child under age 13 whose family income is not over 100% of poverty; (3) provide for making medical assistance available to any disabled individual receiving cash SSI benefits, or receiving Medicaid under the State's options for SSI beneficiaries; and (4) describe how the State will provide medical assistance to any other population group. The State plan would be required to include a description of (a) the eligible population, including categories, duration of eligibility, financial standards and methodologies, and standards for the protection of income and resources of the community spouses of institutionalized beneficiaries; (b) duration and scope of covered services, including variations by population group; (c) the delivery method, such as use of vouchers, fee-for-service, or managed care arrangements; (d) required beneficiary cost-sharing, including any responsibility of parents of recipients under age 19 and the spouses of recipients; (e) any incentives or requirements to encourage appropriate utilization; and (f) any payment provisions for short-term acute general care hospitals or children's hospitals with a specified low-income utilization rate. A State using a fee-for-service system would also have to describe how it determines provider qualifications and sets reimbursement rates. The Medicaid plan would have to include coverage of immunizations for eligible children, in accordance with a schedule developed by the State health department in consultation with those responsible for administering the Medicaid plan. No Medicaid plan could deny or exclude services on the basis of a preexisting condition. If a State contracted with a capitated organization or other entity and allowed the organization to impose preexisting condition exclusions, the State would have to provide alternate coverage for any covered services denied as a result. The bill requires that States provide prepregnancy family planning services and supplies and prohibits the imposition of any treatment limits or financial requirements on mental illness services that are not imposed on services for other illnesses. Each State plan would have to provide that any State law solvency requirements that apply to private sector health plans and providers would apply to Medicaid plans and providers.

Conference agreement

The conference agreement follows the Senate provision with modifications. The agreement would require States to provide medical assistance, subject to State flexibility of benefits under Section 2116 of the bill, to the "disabled" as defined by the State (and subject to Section 2111(a)). The agreement follows the Senate provision regarding treatment of children's hospitals and certain disproportionate share hospitals. The agreement follows the House provision regarding the prohibition on requiring an adult child to contribute to the cost of long-term services for the child's parent. This "family responsibility" provision is not intended to affect estate recoveries. The agreement also establishes requirements relating to solvency standards for MediGrant capitated health care organizations.

SET-ASIDES OF FUNDS FOR POPULATION GROUPS (SEC. 2112 OF MEDIGRANT; SEC. 2112 OF MEDICAID)

House bill

States would be required to devote specified minimum percentages of total program spending to services for each of three groups: low-income families, low-income elderly, and low-income blind and disabled. (Funds set aside for low-income families would have to be spent on families below 185 percent of poverty that included a pregnant woman or child.) For each group, the minimum percentage to be spent would be set equal to 85 percent of the average percentage of the State's Medicaid spending during fiscal year 1992 through fiscal year 1994 devoted to mandatory services for members of that group who were required to be covered under Federal Medicaid law. (The percentage would be set at 75 percent in the case of a State that covered only mandatory services during the base period.)

For the elderly, there would be an additional set-aside for Medicare premium assistance, again based on the percentage of the State's spending that went for such assistance to mandatory individuals in the base period. For purposes of computing the base period expenditures for the low-income elderly, all elderly persons who were in nursing homes would be treated as persons whose coverage was required. Thus, the computation of the base for elderly includes all current long-term spending for elderly who qualify under options that States may use for covering persons with higher income levels.

One of these options is the medically needy option. Medically needy persons have incomes too high to qualify for cash welfare, but incur medical expenses that deplete their assets and incomes to levels that make them needy according to State-determined standards. The base also includes State spending under a special income rule referred to as the "300% rule", for extending eligibility to persons needing nursing home care. Under this rule, States were allowed to cover persons needing nursing home care so long as their income did not exceed 300% of the basic Supplemental Security Income (SSI) cash welfare payment. Nursing home payments for these two groups of non-poor accounted for 61% of total program payments for all elderly beneficiaries and approximately 90% of all spending on nursing home services.[3]

In computing the base period spending percentages, payments to disproportionate share hospitals (DSH) would not be treated as payments for mandatory services.

The MediGrant plan prohibits any State from utilizing MediGrant funds for any purpose other than medical assistance for low-income residents and support functions essential to the provision of that assistance.

A State could establish a set-aside percentage for a population group below the specified minimum percentages if it determined and certified to the Secretary that the health care needs of that group (and any related performance goals in the MediGrant plan) could be met with a lower level of expenditure. Such exceptions could not apply before fiscal year 1998, and determinations would have to be renewed at intervals of no more than three years.

A State that spent less on any group than the required set-aside amount would not be found in substantial violation of the requirements if its spending for each of the three population groups was at least 95 percent of the required amounts and an independent actuary certified that the MediGrant plan was reasonably designed to result in expenditures of the required amounts.

Funds not required to be spent under the set-asides could be spent for additional medical assistance, program administration, or medically-related services, defined as services not included in the definition of medical assistance but related to or supporting the attainment of the strategic objectives and performance goals established under the State's MediGrant plan.

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[3] These calculations are based on a Congressional Research Service memo to the Commerce Committee entitled "Medicaid Nursing Home Expenditures for the Elderly" dated October 6, 1995.

Senate amendment

Similar provision, except the Senate set-asides would be calculated based on expenditures rather than percentages.

Conference agreement

The conference agreement follows the House bill with an amendment establishing a funding set-aside for Federally-qualified health centers and rural health clinics.

It is the Conferees' expectation that actual State MediGrant spending on the recipient populations designated by the set-asides will be significantly higher than is mandated by the set-asides. It is also the Conferees' intention that the set-aside calculations on dollar expenditures serve as a floor for providing health assistance for the elderly, disabled, pregnant women, and children. The set-aside floor serve as a federal guarantee that MediGrant expenditures will be fairly and equitably distributed to different types of beneficiaries.

In providing eligibility for the disabled under the MediGrant program set-aside, the Conferees urge States to consider the special circumstances of women and children with disabilities. An expedited eligibility determination process is especially important for people who have disabilities that are life-threatening and are at risk of dying before such a determination may be made. The Conferees also urge States to provide services to meet the preventive and primary care needs of people with disabilities, including such measures as the prevention of illness through prophylactic and early intervention drugs and the prevention of transmission of illness through measures such as the administration of antiviral drugs to HIV-positive women during pregnancy. Such measures may prevent needless disability and unnecessary medical costs.

PREMIUMS AND COST-SHARING (SEC. 2113 OF MEDIGRANT; SEC. 2113 OF MEDICAID)

House bill

States would be permitted to impose premiums, copayments, coinsurance, or deductibles pursuant to a public schedule. Cost-sharing could be designed to encourage primary and preventive care and discourage unnecessary or less economical care and inappropriate use of emergency services. Amounts could be scaled to reflect economic factors, employment status, family size, availability of other health insurance, or participation in employment training, drug abuse or alcohol treatment, counseling, or other programs promoting personal responsibility. For a family below 100 percent of poverty and including a pregnant woman or child, no premium could be imposed and cost-sharing amounts would have to be nominal (except for cost-sharing designed to deter inappropriate emergency services).

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House provision.

DESCRIPTION OF PROCESS FOR DEVELOPING CAPITATION PAYMENT RATES (SEC. 2114 OF MEDIGRANT; SEC. 2114 OF MEDICAID)

House bill

If a State contracted with HMOs or similar entities on a risk basis for a package of services including at least inpatient hospital and physician care, the MediGrant plan would have to describe: (1) the use of actuarial science in projecting expenditures and utilization for enrollees and setting capitation payment rates; (2) required qualifications for participating organizations; and (3) a process for dissemination to contractors of information on capitation rates and historical fee-for-service cost and utilization data. The State would also have to provide for public notice and an opportunity to comment on this information before each contract year; the notice would have to include the amounts of capitation payments made under the MediGrant plan in the preceding year and expected to be made in the coming year (unless exempt from disclosure under State law).

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House provision.

PREVENTING SPOUSAL IMPOVERISHMENT (SEC. 2115 OF MEDIGRANT; SEC. 2116 OF MEDICAID)

House bill

The income eligibility rules would not permit income of community spouses to be used in determining the nursing home spouse's eligibility unless the income were actually made available to the institutionalized spouse. As in current law, after eligibility has been determined, States would be required to set a minimum monthly maintenance needs allowance for living expenses of the community spouse according to statutory limits. (Currently, this minimum is $1,254 per month and the maximum is $1,871 per month. These amounts may be increased depending on the amount of the community spouse's actual shelter costs and other factors.)

From a couple's combined resources, an amount would be protected for the community spouse. This amount would be the greater of one-half of the couple's resources at the time the institutionalized spouse entered the nursing home, up to a maximum, or a standard established by the State. (Currently, the State resource standard may be no lower than $14,964 and no greater than $74,820.)

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House provision with a Senate amendment to exclude from determinations of income reparations payments from the Federal Republic of Germany.

CONSTRUCTION (SEC. 2116 OF MEDIGRANT; SEC. 2115 OF MEDICAID)

House bill

The bill specifies that no provision shall be construed as creating an individual or group entitlement to medical assistance under Federal law. In addition, the bill grants states flexibility in determining: (a) coverage of any particular service or type of provider or any level of payment; (b) geographical coverage areas; and (c) selection of providers. The MediGrant plan also removes existing limitations on States' ability to contract with managed care plans or individual providers on a capitated or other basis, to contract for case management or coordination services, or to set capitation rates on the basis of competition or negotiation.

Senate amendment

Except for provisions related to immunizations for children and pre-pregnancy family planning services, no provision of this title would be construed as requiring a State to (a) cover any particular items or services; (b) provide for any particular type of provider or any level of payment; (c) provide for the same medical assistance in all geographical areas or political subdivisions of the State; (d) provide for comparability of services to eligible individuals; or (e) provide for freedom of choice of providers; or as limiting the State's ability to contract with managed care plans or individual providers on a capitated or other basis, to contract for case management or coordination services, or to set capitation rates on the basis of competition or negotiation.

Conference agreement

The conference agreement follows the House provision with an amendment. The amendment moves to Section 7002 the construction that no federal entitlement under federal law has been created in any individual, including any provider.

LIMITATIONS ON CAUSES OF ACTION (SEC. 2117 OF MEDIGRANT)

House bill

The bill would remove the existing right for an applicant, beneficiary, provider or health plan to sue a State official under 42 U.S.C. § 1983 to require prospective enforcement of the Medicaid statute. However, the plan would have no effect on any action brought under State law.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House provision with an amendment. The amendment moves to Section 2154 the limitation on causes of action under federal law.

PART C—PAYMENTS TO STATES

ALLOTMENT OF FUNDS AMONG STATES (SEC. 2121 OF MEDIGRANT; SEC. 2121 OF MEDICAID)

House Bill

Beginning with fiscal year 1996, the bill would limit Federal obligations and outlays for each State to fixed allotments. (Obligations are binding agreements to make Federal payments, immediately or in the future. Outlays are actual payments to liquidate obligations.) The obligation allotments would include adjustments to reflect obligations incurred in one year that did not result in outlays until the following year.

For fiscal year 1996, the MediGrant outlay allotment for each State and the District of Columbia would be based on Federal Medicaid payments to the State in fiscal year 1994, increased by the ratio of $95,529,490,500 (the total available for outlay allotments to States and the District for fiscal year 1996) to $83,213,431,458 (the total of fiscal year 1994 Federal payments to the States and the District). For fiscal year 1997 and later years, the outlay allotment would be based on a formula allocation from a fixed pool of total MediGrant funds. A State could carry over any unused obligation allotment amount to a subsequent year.

The pool for fiscal year 1996 would be $95.663 billion (this represents outlay allotments to the States and the District plus allotments to Commonwealths and territories). The pool would be $102.748 billion for fiscal year 1997, $107.268 billion for fiscal year 1998, $111.827 billion for fiscal year 1999, $116.473 billion for fiscal year 2000, $121.311 billion for fiscal year 2001, and $126.351 billion for fiscal year 2002. For later years, the pool amount would be the previous year's amount increased by the lesser of 4.1546 percent or the growth in the consumer price index for all urban consumers (CPI–U) for the 12-month period ending in June before the start of the year in question. The increase in the pool amount over that for the preceding year would be designated the "national MediGrant growth percentage" (NMGP).

For fiscal year 1997 and later years, each State's outlay allotment from the pool would equal a needs-based amount times a scalar factor, subject to certain floors and ceilings. The needs-based amount for a State would be the product of its aggregate need and its old Federal medical assistance percentage for the previous year (FMAP; see below). The scalar factor would be a constant multiplier for all States used to ensure that floor and ceiling provisions, along with the allotments for Commonwealths and territories, do not cause total allotments to exceed the pool amount.

The State's aggregate need would be the product of four factors: residents in poverty, a case mix index, an input cost index, and national average spending per resident in poverty. Residents in poverty would be the average number of individuals in the State below the Federal poverty threshold in the most recent period of 3 calendar years for which data were available. The case mix index would equal the 3-year average ratio between the State's expected per recipient spending and national average per recipient spending, given the State's relative proportions of aged, disabled, and other recipients and assuming that the State's per recipient spending for each group was equal to the national average for that group. The case mix index could not be less than 0.9 or more than 1.15. The input cost index would be the sum of 0.15 and the product of 0.85 and a hospital wage index. This wage index would equal the ratio between annual average wages for hospital employees in the State and the national average; it would be based on the area wage indices computed under Medicare's prospective payment system for inpatient hospital services (or a comparable index if the Medicare index should no longer be available). National average spending per resident in poverty would be computed for fiscal year 1997 using fiscal year 1994 data; for fiscal year 1998 and later years, the figure would be increased by the NMGP.

State outlay allotments could not exceed certain floors and ceilings based on the State's prior allotment. In fiscal year 1997, a State would receive at least 103.5 percent of the fiscal year 1996 outlay allotment. In fiscal year 1998, the State minimum allotment (or floor) would equal 103 percent. In fiscal year 1999, the State floor would equal 102.5 percent. For all fiscal years after 1999, State outlay allotments would not be less than 102 percent. Beginning in fiscal year 1998, a higher floor would apply for certain States based on the one-time increase in the State's allotment from fiscal year 1996 to fiscal year 1997. For a State whose fiscal year 1996–97 outlay allotment increase was greater than 120 percent of the fiscal year 1997 NMGP, the floor would be 104 percent of the previous year's allotment. For those States whose fiscal year 1996–97 outlay allotment increase was greater than 75 percent of the fiscal year 1997 NMGP, but less than 120 percent the floor would equal 103 percent of the previous year's allotment. In fiscal year 1997, the allotment for a State could not exceed 109 percent of the fiscal year 1996 allotment, for each subsequent year the State allotment could not exceed 105.33 percent of the prior year's allotment. However, beginning in fiscal year 1998, the ceiling for the 10 States with the lowest rates of Federal Medicaid spending per resident-in-poverty is higher. In fiscal year 1998 and fiscal year 1999 the allotments for these States will not exceed 106 percent. In fiscal year 2000 the allotment ceiling for these States equals 106.0657 of the prior year's allotment. In fiscal year 2001 the allotment ceiling for these States equals 106.1488 percent of the prior year's allotment. In fiscal year 2002 and all subsequent years the allotment ceiling is set to 106.2319 percent of the prior year's allotments. Allotments for Commonwealths and territories would equal their previous year's allotments increased by the NMGP (in place of the percentage increases provided under current law).

To reduce variations in increases in outlay allotments over time, any State or the District could elect an alternative growth rate formula. A portion of the State's allotment for fiscal year 1996 could be deferred and applied to increase its allotment for one or more subsequent years, so long as the total of the increases did not exceed the amount deferred in fiscal year 1996. (Obligation allotments for the State would be adjusted accordingly.)

In fiscal year 1996 special adjustments are made to the State outlay allotments for Oregon and Tennessee. Oregon's outlay allotment is increased by $155.7 million, Tennessee's outlay allotment is increased by $195.5 million.

A supplemental allotment to be used by the twelve States with the highest number of undocumented aliens for emergency health care services would also be available between fiscal year 1996 and fiscal year 2002. This supplemental pool could not exceed $3 billion over the seven year period. Allotments to the States in any given year would be based on their relative share of undocumented aliens. Aggregate spending in any given year would be determined by taking into account the total $3 billion and the NMGP.

The Secretary would publish preliminary allotments for each fiscal year by April 1 of the preceding fiscal year. The General Accounting Office (GAO) would report to Congress by May 15 on the extent to which the allotments comply with statutory requirements. The Secretary would publish final allotments by July 1, taking into account the GAO analysis and explaining any changes from the preliminary allotments; the Secretary could not modify allotments thereafter. By August 1, GAO would report to Congress on the statutory compliance of the final allotments.

Senate amendment

Beginning with fiscal year 1996, the bill would limit Federal obligations and outlays for each State to fixed amounts. (Obligations are binding agreements to make Federal payments, immediately or in the future. Outlays are actual payments to liquidate obligations.) Obligation allotments would limit the amount the Secretary could agree to pay a State during a year. They would be based on outlay allotments, which represent the maximum actual payments to the State. The obligation allotments would include adjustments to reflect obligations incurred in 1 year that did not result in outlays until the following year.

The Medicaid obligation allotment would represent an amount slightly larger than the outlay allotment pool. In fiscal year 1996, the Medicaid obligation allotment for each State and the District of Columbia would equal the outlay pool of Medicaid outlays divided by 95% (i.e., the obligation amount would be roughly 105% of the outlay amount). Since fiscal year 1996 is a transition year, the fiscal year 1996 outlay allotment pool would be reduced to account for any obligations incurred under current law (the outlay pool amount would be reduced by $24.624 billion). For fiscal year 1997, the outlay would be divided by 98.6% to determine the obligation allotments. For fiscal year 1998, and all subsequent years the outlay allotment would be divided by 99.8% to determine the overall obligation allotment. A similar process is used for individual State obligation allotments.

The outlay pool for fiscal year 1996 would be $97.245 billion (this represents outlay allotments to the States and the District plus allotments to Commonwealths and territories). The pool would be $102.608 billion for fiscal year 1997, $106.712 billion for fiscal year 1998, $110.980 billion for fiscal year 1999, $115.420 billion for fiscal year 2000, $120.037 billion for fiscal year 2001, and $124.838 billion for fiscal year 2002. For later years, the pool amount would be the previous year's amount increased by the lesser of 4% or the growth in the gross domestic product (GDP) for the 12-month ending in June before the start of the year in question. The increase in the pool amount over that for the preceding year would be designated the "national Medicaid growth percentage" (NMGP).

In fiscal year 1996, each State's outlay allotment from the pool would equal 109 percent of the greater of: (1) Its Federal Medicaid expenditures in fiscal year 1995 (excluding any disproportionate share payments); (2) 103.38 percent of its Federal Medicaid expenditures in fiscal year 1994; or (3) 95 percent of Federal Medicaid expenditures in fiscal year 1993 (excluding any disproportionate share payments). This initial allotment would be adjusted to take into account the overall obligation allotment total for the program. All States' allotments would be adjusted in order that the sum of the allotments equal the total. A State could carry over any unused outlay allotment amount to a subsequent year.

For fiscal year 1997 and later years, each State's outlay allotment from the pool would equal a needs-based amount times a scalar factor, subject to certain floors and ceilings. The needs-based amount for a State would be the product of its aggregate need and its Federal medical assistance percentage for the previous year (FMAP; see below). The scalar factor would be a constant multiplier for all States used to ensure that floor and ceiling provisions, along with the allotments for Commonwealths and territories, do not cause total allotments to exceed the pool amount.

The State's aggregate need would be the product of four factors: residents in poverty, a case mix index, an input cost index, and national average spending per resident in poverty. Residents in poverty would be the average number of individuals in the State below the Federal poverty threshold in the most recent period of 3 calendar years for which data were available. The case mix index would equal the ratio between the State's expected per recipient spending and national average per recipient spending, given the State's relative proportions of aged, disabled, and other recipients and assuming that the State's per recipient spending for each group was equal to the national average for that group. The calculation of these average expenditures would not include disproportionate share payments. This index would be based on data that is available for the most recent 3 fiscal years. The input cost index would be the 3-year average of the sum of 0.15 and the product of 0.85 and a hospital wage index. This index would equal the ratio between annual average wages for hospital employees in the State and the national average; it would be based on the area wage data computed under Medicare's prospective payment system for inpatient hospital services (or a comparable index if the Medicare index should no longer be available). National average spending per resident in poverty would be computed for fiscal year 1997 using fiscal year 1995 expenditure data and State three year average numbers of residents in poverty; these average expenditures would then be increased by the NMGP for fiscal year 1997. In later years, the previous year's figure would be increased by the NMGP.

The minimum State outlay allotment is based on the greatest of three amounts: (1) no State would receive an outlay allotment less than 102% of the State's allotment in the previous year; (2) an amount less than 0.26% of the total pool amount; (3) or if the

State's fiscal year 1998 allotment is greater than 103.8% of its fiscal year 1997 allotment:

A State's fiscal year 1999 allotment could not be less than 104.25% of its prior year's allotment;

For fiscal year 2000 and fiscal year 2001 the State's allotment could not be less than 104% of its prior year's allotment;

For fiscal year 2002 the State's allotment could not be less than 103.4% of its prior year's allotment.

State obligation allotments are also subject to a maximum increase. This maximum increase from the prior year's outlay allotment is the product of the NMGP and the following schedule. A State's increase its outlay allotment in:

Fiscal year 1997 can not be greater than 125.5% of the NMGP;

Fiscal year 1998 can not be greater than 132% of the NMGP;

Fiscal year 1999 can not be greater than 151% of the NMGP;

Fiscal year 2000 can not be greater than 156% of the NMGP;

Fiscal year 2001 can not be greater than 144% of the NMGP;

Fiscal year 2002 can not be greater than 146% of the NMGP.

Special outlay allotment rules apply to New Hampshire and Louisiana. For each of fiscal years 1996 through 2000, New Hampshire's outlay allotment would equal $360 million and Louisiana's outlay allotment would equal $2.622 billion. Beginning in fiscal year 1997, allotments for Commonwealths and territories would equal their previous year's allotments increased by the NMGP (in place of the percentage increases provided under current law).

To reduce variations in outlay allotments over time, any State or the District could elect an alternative growth rate formula. A portion of the State's allotment for fiscal year 1996 could be deferred and applied to increase its allotment for one or more subsequent years, so long as the total of the increases did not exceed the amount deferred in fiscal year 1996. (Obligation allotments for the State would be adjusted accordingly.) A State could choose to increase its fiscal year 1996 outlay allotment by a portion of its outlays for one or more of the fiscal years 1997 through 1999. This increase in the State's fiscal year 1996 outlay allotment could not be greater than 25% of the outlay allotment estimated under the regular allotment formula.

The Secretary would publish preliminary allotments for each fiscal year by April 1 of the preceding fiscal year. The General Accounting Office (GAO) would report to Congress by May 15 on the extent to which the allotments comply with statutory requirements. The Secretary would publish final allotments by July 1, taking into account the GAO analysis and explaining any changes from the preliminary allotments; the Secretary could not modify allotments thereafter. By August 1, GAO would report to Congress on the statutory compliance of the final allotments.

Conference agreement

The conference agreement follows the House provision with amendments. Under the agreement, the growth rate following 2002 is established, the small state minimum is set at 0.24%, and special rules for Louisiana, New Hampshire and Nebraska are incorporated. The conference agreement also includes the House provision providing for a $3.5 billion national fund for emergency services provided to illegal aliens for 15 states over a 5 year period.

PAYMENTS TO STATES (SEC. 2122 OF MEDIGRANT; SEC. 2122 OF MEDICAID)

House bill

Subject to the allotment limits, payments to States for medical assistance and medically-related services would equal the State's spending for the services times the applicable FMAP. This would be the greater of the old FMAP, computed as under current law, or a new FMAP, (or, if less, the old FMAP plus 10 percentage points). The new FMAP would equal 100 percent minus the product of (a) 0.39 and (b) the ratio of the total taxable resources (TTR) ratio for the State to the aggregate expenditure need ratio for the State. The TTR ratio would be the ratio of the most recent 3-year average of the State's TTR, as determined by the Secretary of the Treasury, to the sum of the average TTRs for all States (for the District of Columbia, a per capita income ratio would be substituted). The aggregate expenditure need ratio would be the ratio of the State's aggregate expenditure need (as determined in computing the State's allotment; see above) to the sum of the aggregate expenditure needs for all States. The new FMAP could not be less than 40 percent or greater than 83 percent. The FMAP for Commonwealths and territories would be 50 percent. The FMAP for services in Indian Health Service facilities (and for specified facilities of Indian tribes that are not Indian Health Service facilities) would continue to be 100 percent; in addition, no State matching would be required for services to unlawful aliens. For administrative services, the Federal matching percentage would generally be 50 percent, with enhanced matching for specified expenditures as under current law. Provisions of current Medicaid law relating to periodic payments to States and treatment of overpayments and disallowances would be retained.

Senate amendment

Subject to the allotment limits, payments to States for medical assistance and medically-related services would equal the State's spending for the services times the applicable FMAP. The FMAP would be calculated as under current law, except that Alaska's FMAP would be calculated with an adjustment. Alaska's FMAP would equal the average per capita income divided by the input cost index. This adjusted per capita measure would be compared to the per capita income of the continental United States. For all States, the FMAP could not be less than 60% or greater than 83%. The FMAP for Commonwealths and territories would be 50%. The FMAP for services in Indian Health Service facilities (and for specified facilities of Indian tribes that are not Indian Health Service facilities) would continue to be 100%; in addition, no State matching would be required for services to unlawful aliens. For administrative services, the Federal matching percentage would generally be 50%, with enhanced matching for specified expenditures as under current law. Provisions of current Medicaid law relating to periodic payments to States and treatment of overpayments and disallowances would be retained. As under current law, provider-related taxes and donations would be excluded from matching State medical assistance expenditures unless the donations met the definition of a bona fide provider-related donation, or a broad based health care tax. Furthermore, as under current law, donations associated with eligibility determination and outreach activities cannot exceed 10% of administrative spending in the State.

As under current law, States would be required to provide at least 40% of the non–Federal share of Medicaid expenditures. New Hampshire's state expenditures could not be less than 120% of $203 million in 1996, 140% of $203 million in 1997, 160% of $203 million in 1998, 180% of $203 million in 1999 and 200% of $203 million in 2000. Louisiana's state expenditures must be at least 120% of $355 million in 1996, and will follow the same percentage increase progression as New Hampshire through 2000. If not, federal funding will be reduced on a proportional basis.

If a State does not use its full outlay allotment, the difference between the payments and the obligation allotment can be used in the next fiscal year. This carryover amount can not be larger than the total carryover amount from the two preceding years. Any obligated allotment amounts that go unused will be reallocated to qualified States. In order to qualify a State can not have any carryover amount and must apply for the payments. These allotments will be obligated to qualifying States in the following order: (1) States with outlay allotments at their ceiling level; (2) States with allotments between the floor and the ceiling; and (3) States at their floor. If their are not enough funds to fulfill the request of any single group of the States, the funds will be proportionately allocated among the qualifying States in the group.

Special appropriations are provided to the following States: $63 million to Arizona, $250 million to Florida, $34 million to Georgia, $76.5 million to Kentucky, $181 million to South Carolina, $250 million to Washington, and $50 million to Vermont. These funds do not have to be used in any particular fiscal year and can be added to their outlay allotments.

Conference agreement

The conference agreement follows the House bill with a Senate amendment revising the current law FMAP floor.

LIMITATION ON USE OF FUNDS (SEC. 2123 OF MEDIGRANT; SEC. 2123 OF MEDICAID)

House bill

States could use Federal funds only to carry out the purposes of Title XXI. Federal payments would not be made to a State for nonemergency services provided or ordered by providers excluded under the maternal and child health or social services block grant, Medicare, or Medicaid. Spending for medically-related services could not exceed 5 percent of total spending under the MediGrant plan. Spending for administration could not exceed the sum of $20 million plus 10 percent of total spending under the MediGrant plan. This limit would not apply, during the first two years the MediGrant plan was in effect, to spending for quality assurance, utilization review, and similar activities or to spending needed to comply with reporting requirements. As under current law, Federal matching would not be available for services that would have been paid for by a private insurer but for a provision of the insurance contract making the insurer secondary to Medicaid. The definition of allowable emergency services for illegal aliens would be clarified. Payment could not be made for prescription drugs unless the manufacturer had entered into a MediGrant master rebate agreement with the Secretary (see below) and was in compliance with current requirements section 8126 of Title 38, including those for a master agreement with the Secretary of Veterans Affairs. Payment for abortions (or for health benefit coverage including abortions) would be permitted only to save the life of the mother, or in cases of rape or incest. Payment could not be made for drugs or services furnished to cause or assist in causing the death, suicide, euthanasia, or mercy killing of a person.

Senate amendment

States could use Federal funds only to carry out the purposes of Title XXI. Federal payments would not be made to a State for nonemergency services provided or ordered by providers excluded under the maternal and child health or social services block grant, Medicare, or Medicaid. Spending for medically-related services could not exceed 5% of total spending under the Medicaid plan. As under current law, Federal matching would not be available for services that would have been paid for by a private insurer or other payor but for a provision of the insurance contract making the insurer secondary to Medicaid. The definition of allowable emergency services for illegal aliens would be clarified. Federal funds could not be used for: the purchase of land, or to construct or remodel buildings; the payment of room and board (unless for respite care); certain educational services; or vocational rehabilitation services that are offered under other Federally funded programs.

Conference agreement

The conference agreement follows the House provision with a Senate amendment that denies Federal financial participation in any MediGrant payment for expenditures for medical assistance if payment could have been made under any other federally operated or financed health care program, other than a program under the Indian Health Service.

GRANT PROGRAM FOR COMMUNITY HEALTH CENTERS AND RURAL HEALTH CENTERS (SEC. 2124 OF MEDICAID)

House bill

No provision.

Senate amendment

The bill provides for 1% of the pool amount to be set aside and used for grants for primary and preventive health care services provided at rural health clinics and federally qualified health centers.

Conference agreement

The conference agreement does not include the Senate Amendment. The agreement includes an alternate provision under Section 2112.

PART D—PROGRAM INTEGRITY AND QUALITY

USE OF AUDITS TO ACHIEVE FISCAL INTEGRITY (SEC. 2131 OF MEDIGRANT; SEC. 2131 OF MEDICAID)

House bill

Each MediGrant plan would be required to provide for an annual audit of the State's medical assistance expenditures in compliance with the Single Audit Act (chapter 75 of title 31, United States Code). If the Secretary determined that a State's audit was performed in substantial violation of the chapter 75 provision, the Secretary would be permitted to conduct a verification audit or require that the State do so. Within 30 days of completion of an audit or verification audit, the State would be required to provide a copy of the audit report to the Secretary along with the State's response to the auditor's recommendation. The State also would be required to make the audit report available for public inspection.

Each State would be required to maintain fiscal controls, accounting procedures, and data processing safeguards that are reasonably necessary to assure the fiscal integrity of the State's activities. The State's controls and procedures would be required to be generally consistent with generally accepted accounting principles as recognized by the Governmental Accounting Standards Board or the Comptroller General.

Each MediGrant plan would be required to provide that the records of any provider could be audited to ensure that proper payments were made under the plan.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

FRAUD PREVENTION PROGRAM (SEC. 2132 OF MEDIGRANT; SEC. 2132 OF MEDICAID)

House bill

To detect fraud and abuse by beneficiaries, providers, and others, each MediGrant plan would be required to have a program that follows the following. Certain program contractors and providers would be required to disclose ownership and control information to State agencies in accordance with sections 1124 and 1124(a) of the Social Security Act. An entity (other than an individual practitioner or a group of practitioners) would be required to supply information on ownership, controlling interests, and conviction of certain offenses upon request by the Secretary or the State agency. A State could exclude a provider from participation in the MediGrant plan on its own initiative, and would be required to exclude any entity when required to do so by the Secretary pursuant to section 1128 or 1128A of the Act. Whenever a provider was terminated, suspended, sanctioned, or prohibited from participating under a State's plan, the State agency would be required to notify the Secretary and, in the case of a physician, the State medical licensing board. States would be required to provide information and access to information respecting sanctions taken against practitioners and providers by State licensing authorities.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

INFORMATION CONCERNING SANCTIONS TAKEN BY STATE LICENSING AUTHORITIES AGAINST HEALTH CARE PRACTITIONERS AND PROVIDERS (SEC. 2133 OF MEDIGRANT; SEC. 2133 OF MEDICAID)

House bill

The provision is identical to the current law provision. Each State would be required to have in effect a system for reporting and providing access to information for use by the Secretary and other officials concerning licensing revocations and other sanctions taken against providers and practitioners by State licensing authorities, peer review organizations, or accreditation entities. A State would be required to report any adverse action taken, whether a provider had surrendered a license or left the State, any other loss of license, and any negative action taken by a reviewing authority. The State would be required to provide the Secretary with access to whatever documents the Secretary needed to determine the facts and circumstances concerning the actions taken. Such information would have to be provided under arrangements made by the Secretary in the form the Secretary determined to be appropriate to (1) provide for the Secretary's activities, and (2) provide information to other specified authorities in order to protect their programs and services.

The Secretary would be required to safeguard the confidentiality of information furnished. However, any party authorized to disclose information would be permitted to do so. In implementing this section, the Secretary would be required to provide for maximum coordination of section 422 of the Health Care Quality Improvement Act of 1986.

Senate amendment

Identical provision with technical amendments.

Conference agreement

The conference agreement follows the Senate provision.

STATE FRAUD CONTROL UNITS (SEC. 2134 OF MEDIGRANT; SEC. 2134 OF MEDICAID)

House bill

Each MediGrant plan would be required to provide for a State MediGrant fraud control unit (FCU) unless the State demonstrated that such a unit would not be cost-effective because minimal fraud existed, and that beneficiaries would be protected from abuse and neglect without such a unit. The FCU would be required to be separate and distinct from the State agency responsible for the operation and administration of the MediGrant plan. It would have to be a part of the State Attorney General's office or coordinate with that office. It would be required to have statewide prosecutorial authority or the ability to refer to local prosecutors. The FCU would investigate and prosecute violations of State fraud laws, and review and prosecute cases involving neglect or abuse of beneficiaries in nursing homes and other facilities. It would be required to provide for the collection of overpayments it had discovered were made to health care providers. It would be required to employ auditors, attorneys, investigators, and other necessary personnel.

Senate amendment

Identical provision with technical amendments.

Conference agreement

The conference agreement follows the Senate provision.

RECOVERIES FROM THIRD PARTIES AND OTHERS (SEC. 2135 OF MEDIGRANT; SEC. 2135 OF MEDICAID)

House bill

Each MediGrant plan would be required to ascertain the legal liability of third parties to pay for care and services available under the plan and seek reimbursement to the extent of legal liability unless the cost of recovery was expected to exceed the amount of reimbursement.

MediGrant plans would be required to prohibit a provider from refusing to furnish a covered service to a beneficiary because of a third party's potential liability for the service, and from trying to collect payment from a beneficiary that exceeded payment that would be made under the plan. For violation of the collection provision, a MediGrant plan could provide for a payment reduction up to 3 times the amount sought to be collected.

States would be required to prohibit any health insurer, in enrolling an individual or in making payments for benefits, from taking into account that the individual was eligible for or was provided medical assistance under a MediGrant plan.

A State would be required to have laws in effect under which the State is considered to have acquired the rights of an individual to payments by a party that is liable for the individual's health care items and services. Each State would be required to provide for mandatory assignment of rights of payment for medical support and care to beneficiaries.

Each State with a MediGrant plan would be required to have in effect laws relating to medical child support. Each State would have to prohibit an insurer from denying enrollment of a child because the child was born out of wedlock, was not claimed as a dependent on the parent's Federal income tax return, or did not reside with the parent or in the insurer's area. In a case in which a parent was required by a court or administrative order to provide health coverage for a child, and the parent was eligible for family health coverage, State laws would have to require the employer and insurer to permit the parent to enroll the child upon application by either parent or by the State child support agency, and limit the circumstances under which the insurer could disenroll such a child. State laws would be required to prohibit an insurer from imposing requirements on a State agency that has been assigned the rights of an individual that are different from requirements applicable to an agent of any other covered individual; require an insurer, in the case of a child who has health coverage through the insurer of a non-custodial parent, to provide information to the custodial parent; permit the custodial parent to submit claims for covered services without the approval of the non-custodial parent, and make payment on claims to the custodial parent, the provider, or the State agency; permit the State agency to garnish the employment income of, and require withholding amounts from State tax refunds to, any person who is required by court or administrative order to cover the medical costs of a child who is eligible for medical assistance, has received payment from a third party for the costs of the child's services, and has not used the payment to reimburse the appropriate party.

A State would be permitted to take appropriate action to adjust or recover from an individual or the individual's estate amounts paid as medical assistance under a MediGrant plan.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House provision.

ASSIGNMENT OF RIGHTS OF PAYMENT (SEC. 2136 OF MEDIGRANT; SEC. 2136 OF MEDICAID)

House bill

As a condition of eligibility for medical assistance under a State's MediGrant plan, an individual would be required to assign to the State any rights to medical support and payment for medical care from any third party of the individual or any other person who is eligible and on whose behalf the individual has the legal authority to execute an assignment of such rights. An individual would be required to cooperate with the State agency in establishing paternity of a child born out of wedlock and in obtaining support and payments for the individual and child unless the individual was a pregnant woman or was found to have good cause for refusing to cooperate as determined by the State. An individual would be required to cooperate with the State in identifying and providing information to assist the State to pursue any liable third party unless the individual had good cause for refusing to cooperate as determined by the State. The State would be required to provide for entering into cooperative arrangements (including financial arrangements) with any appropriate agency of any State and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to the enforcement and collection of rights to support or payment that had been assigned.

Any amount collected by the State under an assignment would be retained by the State to reimburse it for payments made on behalf of an individual with respect to whom the assignment was executed (with appropriate reimbursement to the Federal Government of its share of the payment). The remainder of such amount collected would be paid to the individual.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

QUALITY ASSURANCE STANDARDS FOR NURSING FACILITIES (SEC. 2137 OF MEDIGRANT; SEC. 2137 OF MEDICAID)

House bill

OBRA 87 nursing home reform provisions would be replaced with new requirements. State plans would be required to establish and maintain standards for facilities providing services under the State's program. Such standards would have to require nursing facilities to care for residents in a manner and environment that promote maintenance or enhancement of quality of life. Standards would also be required to address the following areas: the treatment of resident medical records; policies, procedures, and bylaws for operation; quality assurance systems; resident assessment procedures, including care planning and outcome evaluation; the assurance of a safe and adequate physical plant for the facility; qualifications for staff sufficient to provide adequate care, as defined by the State, and utilization review.

Standards for nursing facilities would also be required to provide for the protection and enforcement of resident rights, including rights to exercise the individual's rights as a resident of the facility and as a citizen or resident of the U.S.; to receive notice of rights and services; to be protected against the misuse of resident funds; to be provided privacy and confidentiality; to voice grievances; to examine the results of State certification program inspections; to refuse to perform services for the facility; to be provided privacy in communications and to receive mail; to have the facility provide immediate access to any resident by any representative of the State's certification program, the resident's individual physician, the State long-term care ombudsman, and any person the resident has designated as a visitor; to retain and use personal property; to be free from abuse, including verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion; to be provided with prior written notice of a pending transfer or discharge; to organize and participate in resident groups in the facility and to have family members meet in the facility with the families of other residents; to participate in social, religious, and community activities that do not interfere with the rights of other residents; to choose a personal attending physician, to be fully informed in advance about care and treatment, and (except with respect to a resident adjudged incompetent) to participate in care planning and treatment or changes in care and treatment. In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident would devolve upon, and, to the extent judged necessary by a court, be exercised by the person appointed under State law to act on the resident's behalf.

States would be required to promulgate standards either through the State's legislature, regulatory, or other process, and they could take effect only after the State had provided the public with notice and an opportunity for comment.

State plans would also be required to provide for the establishment and operation of a program for the certification of nursing facilities that meet specified standards as well as the decertification of those facilities that fail to meet the standards. States would be required to ensure public access (as defined by the State) to the certification program's evaluations of participating facilities, including compliance records and enforcement actions and other reports by the State regarding ownership, compliance histories, and services provided by certified facilities. States would be required to audit their expenditures under the program, not less often than every 4 years, through an entity designated by the State which is not affiliated with the program.

States would be required to impose certain sanctions against nursing facilities not meeting requirements. If a State determined that a certified nursing facility no longer substantially met specified requirements and further determined that the facility's deficiencies immediately jeopardized the health and safety of residents, then the State would be required, at a minimum, to terminate the facility's certification for participation. If the facility's deficiencies did not immediately jeopardize the health and safety of residents, the State could, in lieu of termination, provide lesser sanctions, including denial of payment for persons admitted after a specified date.

States could not impose sanctions until a facility has had a reasonable opportunity to correct its deficiencies, following the initial determination that it no longer substantially met the requirements for certification, and, has been given reasonable notice and opportunity for a hearing. A State's decision to deny payment for new admissions would be effective only after notice to the public and the facility, as may be provided for by the State. Denial of payment for new admissions would end when the State found that the facility was in substantial compliance (or was making good faith efforts to achieve substantial compliance). Facilities would, however, be required to be in compliance by the end of the eleventh month following the month when the decision to deny payments becomes effective. If facilities did not substantially meet the requirements by that time, States would be required to terminate their certification for participation.

Senate amendment

Current law nursing home reform provisions contained in section 1919 of the Social Security Act would apply to nursing facilities providing services under the State's plan. States with State law requirements for nursing facilities that are equivalent to or stricter than current law requirements, and contain State oversight and enforcement authority over nursing facilities, including penalty provisions, that are equivalent to or stricter than oversight and enforcement authority in current law, could apply to the Secretary for a waiver of current law requirements. The Secretary would determine whether State law requirements were equivalent to or stricter than current law and would be required to approve or deny a waiver application within 120 days after submission. A State granted a waiver would be subject to: (1) a penalty of up to 2 percent of its allotment if the Secretary determines that a State has failed to comply with current law nursing home reform requirements or any State law requirements in effect as a result of a waiver; (2) suspension or termination of the waiver; and (3) any other authority available to the Secretary to enforce the requirements of current law.

Conference agreement

The conference agreement follows the Senate provision with modification providing for Federal enforcement of State facilities, and enhanced State enforcement of standards for other nursing facilities. The agreement also provides for Federal enforcement action in the case of failure of State enforcement to correct deficiencies.

OTHER PROVISIONS PROMOTING PROGRAM INTEGRITY (SEC. 2138 OF MEDIGRANT; SEC. 2138 OF MEDICAID)

House bill

State agencies responsible for surveying health care facilities or organizations would be required to make public, in readily available form and place, pertinent findings on the compliance of the facility or organization with the requirements of law. Persons or institutions providing services under the State's plan would be required to keep such records (including ledgers, books, and original evidence of costs) as are necessary to fully disclose the extent of the services provided, and to furnish information about payments claimed, as the State may from time to time request.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision. It is the expectation of the conferees that States will respond to the needs of the chronically mentally ill. For this purpose, State MediGrant plans will provide under section 2139(c) quality assurance programs for individuals with chronic mental illness. For this purpose, chronic mental illness shall be defined through diagnosis, disability, and duration and shall include disorder with psychotic symptoms, such as schizophrenia, schizoaffective disorder, manic depression disorder, and autism, as well as severe forms of other mental disorders, such as major depression, panic disorder, and obsessive compulsive disorder.

PART E—ESTABLISHMENT AND AMENDMENT OF STATE PLANS

SUBMITTAL AND APPROVAL OF PLANS (SEC. 2151 OF MEDIGRANT; SEC. 2151 OF MEDICAID)

House bill

States would be required to submit to the Secretary a MediGrant plan that meets the requirements of Title XXI. A State with a Title XXI fiscal year 1996 allotment of more than $10 billion would be required to have specific authorization of its State legislature to submit a plan. Unless the Secretary found that a plan substantially violated the requirements of Title XXI, the plan would be approved and would be effective beginning with the calendar quarter specified in the plan, but no earlier than the first calendar quarter that begins at least 60 days after the plan is submitted.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the Senate provision.

SUBMITTAL AND APPROVAL OF PLAN AMENDMENTS (SEC. 2152 OF MEDIGRANT; SEC. 2152 OF MEDICAID)

House bill

A State would be permitted to submit an amendment to its MediGrant plan at any time. However, any amendment that would eliminate or restrict eligibility or benefits under the plan could not take effect before it was transmitted to the Secretary, unless there was prior or contemporaneous public notice of the change, as provided under State law. Nor could it be effective for longer than a 60-day period unless the amendment had been transmitted to the Secretary before the end of the period. Any other amendment could not remain in effect after the end of a State fiscal year (or if later, the end of the 90-day period on which it becomes effective) unless the amendment had been transmitted to the Secretary. These requirements would not apply to an amendment submitted on a timely basis in response to an order of a court or the Secretary.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

PROCESS FOR STATE WITHDRAWAL FROM PROGRAM (SEC. 2153 OF MEDIGRANT)

House bill

A State could rescind its plan and discontinue participation in the program at any time after providing 90 days prior notice to the public and to the Secretary. Such discontinuation would not apply to Federal payments to States for expenditures made for items and services furnished under the plan before the effective date of the discontinuation.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision.

SANCTIONS FOR SUBSTANTIAL NONCOMPLIANCE (SEC. 2154 OF MEDIGRANT; SEC. 2153 OF MEDICAID)

House bill

The Secretary would be required to review promptly MediGrant plans and plan amendments to determine if they substantially comply with requirements. If the Secretary determined that a plan or plan amendment substantially violated the requirements and, within 30 days of submittal, provided written notice to the State, the Secretary would be required to issue an order specifying that the plan or amendment would not be effective at the end of the 30-day period (or 120 days in the case of the initial submission of the MediGrant plan). Before making such a determination, the Secretary would be required to consult with the State and consider any clarifications and additional information submitted. The Secretary would be required to explain and justify any determination inconsistent with any previous determination. A plan or amendment would be considered to substantially violate a requirement if a provision were material and substantial in nature and effect, and were inconsistent with an express requirement. Failure to meet a strategic objective or performance goal would not be considered a substantial violation. A State could appeal the Secretary's determination through administrative and judicial procedures.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision with an amendment that provides for a process by which individuals may register complaints with the Secretary. It is the intent of the Conferees that the appropriate committees of Congress hold oversight hearings in cases where States fail to respond to notifications by the Secretary under section 2154(g).

The conference agreement also includes in section 2154(c) a provision stating that only the Secretary, in accordance with this Title, may compel a State under federal law to comply with the provisions of this Title and that no other cause of action may be filed under federal law against a State.

SECRETARIAL AUTHORITY (SEC. 2155 OF MEDIGRANT; SEC. 2154 OF MEDICAID)

House bill

The Secretary would be permitted to negotiate a satisfactory resolution to any dispute concerning the approval of a plan or the compliance of a plan. The Secretary would be prohibited from delegating authority for approval of plans other than to the Administrator of the Health Care Financing Administration. The Administrator would be prohibited from making any further delegation of such authority. The Secretary would be required to administer the program only through a prospective formal rulemaking process, including issuing notices of proposed rule making, publishing proposed rules or modifications to rules in the Federal Register, and soliciting public comment.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

PART F—GENERAL PROVISIONS

DEFINITIONS (SEC. 2171 OF MEDIGRANT; SEC. 2171 OF MEDICAID)

House bill

"Medical assistance" would be defined as including an extensive list of services similar to those specified under current law, and, in addition, enabling services to increase accessibility to primary and preventive services. "Eligible low-income individual" would mean an individual who has been determined eligible by the State and whose family income does not exceed a percentage specified in the plan that is not greater than 300% of the poverty line. In determining income, States would be permitted to exclude costs incurred for medical care. "Medicare cost sharing" would include Medicare premiums, coinsurance, and deductibles. Definitions of child, pregnant woman, and poverty line would be the same as in current law.

Senate amendment

Similar provision. "Eligible low-income individual" would be defined as an individual who had been determined eligible by the State and whose family income did not exceed a percentage that was specified in the plan and was not greater than 250% of the poverty line. In determining income, States would be permitted to exclude costs incurred for medical care. The term "retirement age" would have the same meaning as in section 216(*l*)(1) of the Social Security Act.

Conference agreement

The conference agreement follows the House provision with amendments including provisions relating to home and community-based health care and supportive services, nursing care services, abortion and assisted suicide, and the definitions of "low-income individuals" and an "elderly individual."

It is the Committee's intention that the definition of "medical assistance" shall include services provided by a Christian Science sanatorium (nursing facility) and a Christian Science visiting nurse organization, listed and certified by The First Church of Christ, Scientist, in Boston, Massachusetts, or the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., and services provided in a home setting by a Christian Science nurse listed in the *Christian Science Journal.*

TREATMENT OF TERRITORIES (SEC. 2172 OF MEDIGRANT; SEC. 2172 OF MEDICAID)

House bill

The Secretary's waiver authorization would be extended to include Puerto Rico, Guam, and the Virgin Islands.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House provision.

DESCRIPTION OF TREATMENT OF INDIAN HEALTH SERVICE FACILITIES (SEC. 2173 OF MEDIGRANT; SEC. 2173 OF MEDICAID)

House bill

In a State in which there is at least one Indian Health Service facility, the MediGrant plan would have to describe (1) what provision, if any, has been made for payment of items and services furnished by the facilities, and (2) how medical assistance will be provided to eligible Indians, as determined by the State in consultation with appropriate Indian tribes and tribal organizations. For services provided to Indians, the Federal matching rate to state Medicaid programs would be 100%.

Senate amendment

In a State in which there is at least one Indian Health Service facility, the State would have to describe (1) what provision, if any, has been made for payment of items and services furnished by the facilities, and (2) how medical assistance will be provided to eligible Indians, as determined by the State in consultation with appropriate Indian tribes and tribal organizations.

Conference agreement

The conference agreement follows the House provision.

APPLICATION OF CERTAIN GENERAL PROVISIONS (SEC. 2174 OF MEDIGRANT; SEC. 2174 OF MEDICAID)

House bill

The proposal would clarify that certain sections of Title XI would apply to MediGrant.

Senate amendment

Similar provision.

Conference agreement

The conference agreement follows the House bill.

REQUIREMENTS FOR MANUFACTURERS OF OUTPATIENT PRESCRIPTION DRUGS (SEC. 2175 OF MEDIGRANT; SEC. 2175 OF MEDICAID)

House bill

The House bill retains the current law Federal drug rebate program, with modifications.

Senate amendment

Similar provision with a provision prohibiting states from imposing supplemental rebates. The Senate amendment also would require the Secretary to establish a Medicaid Drug Rebate Program Task Force to study whether the Medicaid drug rebate program should be retained or repealed. By October 1, 1998 the Task Force would have to report its study results to the Secretary who would transmit the report to the Senate Committees on Finance and Aging and the House Committee on Commerce.

Conference agreement

The conference agreement follows the House provision, with the Senate amendment for supplemental rebates.

OTHER PROVISIONS (SEC. 16002 OF HOUSE BILL; SEC. 7191 OF SENATE AMENDMENT)

House bill

Effective on the date of enactment, Title XIX would cease to be an entitlement program for individuals and Federal obligations to States would be limited to statutory obligation allotments for fiscal year 1996. The Secretary would be prohibited from entering into any obligation with a State for expenses incurred on or after the earlier of October 1, 1996, or the first day the State's plan under Title XXI was effective. A State that submitted claims for payment under Title XIX after the date of enactment would be deemed to have accepted the obligation limitation. State's claims for obligations incurred before the date of enactment would have to be submitted for payment by June 30, 1996.

Any cause of action that required a State to establish or maintain minimum payment rates under Title XIX that was not final as of the date of enactment would not be continued. For any payment made under Title XIX before October 1, 1995, for which disallowance was not taken or not completed by that date, the Secretary would be required to discontinue the disallowance proceeding. If the disallowance had been taken as of the date of enactment, the Secretary would be required to rescind any effected payment reductions and return payments to the State.

Any judicial or administrative decision applied to a State's Medicaid program under Title XIX would not apply to the State's MediGrant plan under Title XXI.

The Vaccines for Children program would be repealed effective on the date of enactment. Although the repeal would not affect the distribution of vaccines purchased and delivered before enactment, no further vaccine purchases could be made under any Title XIX contract.

A MediGrant plan under title XXI would be added to the term "State health care program." The role of the Inspector General under Title XIX would continue under Title XXI.

The bill would extend the existing waiver for the Dayton Area Health Plan to the last day of the last calendar quarter in which Ohio has a Title XIX Medicaid plan in effect.

Senate amendment

Similar provision, with a provision increasing medical assistance funding to Puerto Rico to $200 million for fiscal year 1996.

Conference agreement

The conference agreement follows the House provision.

The Conferees would like to make special note of the repeal of the Vaccines for Children (VFC) program. The Clinton Administration developed a universal government vaccine purchase program (modified before enactment) based on the premise that cost was the most significant barrier to childhood immunization. It also used out-of-date data showing that immunization rates were very low. However, numerous Congressional witnesses and a June, 1995 General Accounting Office (GAO) report have contradicted these basic premises. GAO stated that there is insufficient evidence to conclude that the cost of vaccine has been a barrier to timely immunization. GAO found that 95 percent of the nation's children are vaccinated by school age, and that immunization rates for preschool children even before VFC were at or near the 90 percent national goals for 1996. GAO found that more important barriers to full immunization resulted from missed opportunities at health clinics and private providers' offices, lack of parental and provider understanding, less than optimal hours and organization.

GAO also has documented that the Secretary and the Centers for Disease Control have grossly mismanaged the program since its inception. In repealing Section 1928, the Conferees intend that all contracting authority under Section 1928 is terminated. Contracts currently in effect were negotiated under the authority granted to the Secretary under Section 1928 of the Social Security Act and Section 317 of the Public Health Service Act and will continue to their conclusion pursuant to authority under Section 317. With respect to subsequent contracts under Section 317, all procedures and requirements for purchase and delivery of vaccine will revert to those in place prior to enactment of Section 1928.

The Conferees understand that CDC has made representations to the states that federal reimbursement is available for distribution of vaccines pursuant to Section 1928(d). To avoid wastage of vaccine, any products already purchased and delivered to the states, and for which the state has a distribution contract in effect on the date of enactment, shall be eligible for reimbursement for such distribution.

WAIVERS (SEC. 7193 OF SENATE AMENDMENT)

House bill

No provision.

Senate amendment

At State option, Medicaid waivers granted under section 1115 of the Social Security Act and implemented as of Sept. 1, 1995, could be continued or terminated.

Conference agreement

The conference agreement does not include the Senate amendment.

CHILDREN WITH SPECIAL HEALTH CARE NEEDS (SEC. 7194 OF SENATE AMENDMENT)

House bill

No provision.

Senate amendment

The Secretary would be required to develop a classification system to identify children with special health needs not later than 18 months after enactment. Upon completion of the system, the Secretary would be required to make grants to up to 5 States for 5-year demonstration projects to test the reliability and validity of the system, develop methods of assuring quality care, and provide for initial methods for identifying children with special health care needs. For each of fiscal years 1997–2001, $2 million would be authorized to be appropriated for demonstration projects.

Conference agreement

The conference agreement does not include the Senate amendment.

CBO REPORTS (SEC. 7195 OF SENATE AMENDMENT)

House bill

No provision.

Senate amendment

The Congressional Budget Office would be directed to prepare an annual analysis of the effects of Title XXI on the health insurance status of children, the elderly, and the disabled and report to the Senate Finance Committee and the House Commerce Committee by May 15 of each year.

Conference agreement

The conference agreement does not include the Senate amendment.

ADJUSTMENT OF POOL AMOUNTS (SEC. 7196 OF SENATE AMENDMENT)

House bill

No provision.

Senate amendment

The Senate amendment adjusts the pool amounts under the Medicaid distribution formula for fiscal years 1996, 1997, 2000, and 2001.

Conference agreement

The conference agreement does not include the Senate amendment.

STATE REVIEW OF MENTALLY ILL OR RETARDED NURSING FACILITY RESIDENTS UPON CHANGE IN PHYSICAL OR MENTAL CONDITION (SEC. 7197 OF SENATE AMENDMENT)

House bill

No provision.

Senate amendment

The Senate amendment makes modifications to nursing home reform requirements under current law.

Conference agreement

The conference agreement does not include the Senate amendment. A similar provision is included under section 2137 of the MediGrant reform plan.

NURSE AIDE TRAINING IN NURSING FACILITIES SUBJECT TO EXTENDED SURVEY UNDER CERTAIN OTHER CONDITIONS (SEC. 7198 OF SENATE AMENDMENT)

House bill

No provision.

Senate amendment

The Senate amendment makes modifications to nurse aide training requirements under current law.

Conference agreement

The conference agreement does not include the Senate Amendment. A similar provision is included under section 2137 of the MediGrant reform plan.

MEDICARE/MEDICAID INTEGRATION DEMONSTRATION PROJECT (SEC. 7199 OF SENATE AMENDMENT)

House bill

No provision.

Senate amendment

The Senate amendment requires the Secretary to conduct demonstration projects integrating Medicare and Medicaid financing and delivery of health care services for chronically ill elderly and disabled beneficiaries of both programs.

Conference agreement

The conference agreement includes the Senate amendment.

TITLE VIII—MEDICARE

SUBTITLE A—MEDICAREPLUS/MEDICARE CHOICE

1. ESTABLISHMENT OF PROGRAM (SEC. 15001 OF HOUSE BILL; SEC. 7001 OF SENATE BILL)

Current law

Persons enrolling in Medicare have two basic coverage options. They may elect to obtain services through the traditional fee-for-service system under which program payments are made for each service rendered. Under section 1876 of the Social Security Act, they may also elect to enroll with a managed care organization which has entered into a payment agreement with Medicare. Three types of managed care organizations are authorized to contract with Medicare: an entity that has a risk contract with Medicare, an entity that has a cost contract with Medicare, or a health care prepayment plan (HCPP) that has a cost contract to provide Medicare Part B services. Risk-contracts are frequently referred to as TEFRA risk contracts and cost contracts are frequently referred to as TEFRA cost contracts. TEFRA refers to the 1982 legislation, the Tax Equity and Fiscal Responsibility Act of 1982, which established the rules governing these types of contracts.

A beneficiary in an area served by a health maintenance organization (HMO) or competitive medical plan (CMP) with a Medicare risk contract may voluntarily choose to enroll in the organization. Medicare makes a single monthly capitation payment for each of its enrollees. In return, the entity agrees to provide or arrange for the full range of Medicare services through an organized system of affiliated physicians, hospitals and other providers. The beneficiary must obtain all covered services through the HMO or CMP, except in emergencies. The beneficiary may be charged the usual cost-sharing charges or pay the equivalent in the form of a monthly premium to the organization. Beneficiaries are expected to share in the projected savings through the provision of benefits in addition to that included in Medicare's benefit package.

Beneficiaries may also enroll in organizations with TEFRA cost contracts. These entities must meet essentially the same conditions of participation as risk contractors; however they may have as few as 1,500 enrollees (rather than 5,000) to qualify. Under a cost contract, Medicare pays the actual cost the entity incurs in furnishing covered services (less the estimated value of beneficiary cost-sharing). Enrollees obtain supplemental benefits by paying a monthly premium. The entity must offer a basic package (which covers all or a portion of Medicare cost-sharing charges); any additional benefits must be priced separately. (Conversely, a risk-contractor may offer just one package.) Enrollees in TEFRA cost-contract entities may obtain services outside the entity's network; however, the entity has no obligation to cover the beneficiary's cost-sharing in this case.

A third type of managed care arrangement is the HCPP. A HCPP arrangement is similar to a TEFRA cost-contract except that it provides only Part B services. Further, there are no specific statutory conditions to qualify for a HCPP contract. Some HCPPs are private market HMOs, while others are union or employer plans. HCPPs have no minimum enrollment requirements, no requirement that the plan have non-Medicare enrollees, or a requirement for an open enrollment period. Unlike TEFRA cost contractors (but like risk contractors), HCPPs may offer a single supplemental package that includes both Part B cost-sharing and other benefits; cost-sharing benefits need not be priced separately.

Any Medicare beneficiary residing in the area served by an HMO/CMP may enroll, with two exceptions. The first exception applies to beneficiaries not enrolled in Part B. The second exception applies to persons qualifying for Medicare on the basis of end-stage renal disease (ESRD); however, persons already enrolled who later develop ESRD may remain enrolled in the entity.

The HMO/CMP must have an annual open enrollment period of at least 30 days duration. During this period, it must accept beneficiaries in the order in which they apply up to the limits of its capacity, unless to do so would lead to violation of the 50 percent Medicare-Medicaid maximum or to an enrolled population unrepresentative of the population in the area served by the HMO.

TEFRA risk contractors are required to hold an additional open enrollment period if any other risk-based entity serving part of the same geographic area does not renew its Medicare contract, has its contract terminated, or has reduced its service area to exclude any portion of the service area previously served by both contractors. In such cases, the Secretary must establish a single coordinated open enrollment period for the remaining contractors. These remaining HMOs/CMPs must then accept its enrollees during an enrollment period of 30 days.

An enrollee may request termination of his or her enrollment at any time. An individual may file disenrollment requests directly with the HMO or at the local social security office. Disenrollment takes effect on the first day of the month following the month during which the request is filed. The HMO may not disenroll or refuse to re-enroll a beneficiary on the basis of health status or need for health services.

The requirement for an open enrollment period does not apply to HCPPs. These entities may deny enrollment or terminate enrollment on medical or other grounds, if in doing so they guse the same criteria for Medicare and non-Medicare enrollees. As a result, employer or union plans may restrict enrollment to covered retirees.

The Secretary is authorized to prescribe procedures and conditions under which eligible organizations contracting with Medicare may inform beneficiaries about the organization. Brochures, applications forms, or other promotional or informational material may be distributed only after review and approval by the Secretary of HHS. HMOs may not disenroll or refuse to re-enroll a beneficiary because of health status or need for health care services. HMOs must provide enrollees, at the time of enrollment and annually thereafter, an explanation of rights to benefits, restrictions on services provided through nonaffiliated providers, out-of-area coverage, coverage of emergency and urgently needed services, and appeal rights. A terminating HMO must arrange for supplementary coverage for Medicare enrollees for the duration of any preexisting condition exclusion under their successor coverage for the lesser of 6 months or the duration of the exclusion period.

House bill

a. In General. The Social Security Act would be amended by establishing a MedicarePlus program. Sec. 15001 of the bill establishes a new sec. 1805 of the Social Security Act, relating to increasing choice under Medicare. (Sec. 15001)

b. Types of Choices. Every individual entitled to Medicare Part A and enrolled under Part B could elect to receive benefits through two options: (1) the existing fee-for-service system ("the non-MedicarePlus option") or (2) through a MedicarePlus product ("the MedicarePlus option"). A MedicarePlus product could be a product offered by a provider-sponsored organization; a high deductible policy which would be coupled with a Medisave account; or a product operating on a fee-for-service, or any other basis. It also could be offered by an organization that is a union, Taft-Hartley, or association sponsor. (New sec. 1805(a))

c. Special Rules. In general, an individual would be eligible to elect a MedicarePlus product offered by a MedicarePlus organization only if the organization served the geographic area in which in the individual resided. To enroll in a product offered by a limited-enrollment MedicarePlus organization, an individual would have to be affiliated with it. In the case of a product offered by a union or Taft-Hartley sponsor, the individual would have to elect the MedicarePlus product offered by the sponsor during the first enrollment period in which the individual was eligible to make such an election. An individual would not be eligible to elect a product offered by a union or Taft-Hartley sponsor if the individual previously had elected a MedicarePlus product offered by the organization and had subsequently discontinued to elect the product. An individual eligible for an annuity under the Federal Employee Health Benefit Program would not be eligible for a high-deductible/medisave product. (New sec. 1805(b))

d. Enrollment Procedures. The Secretary would be required to establish a process for electing non-MedicarePlus or MedicarePlus coverage in an expedited manner to permit election of MedicarePlus products in an area as soon as they became available. Elections would be made (or changed) only during specified coverage election periods. An individual who wished to elect a MedicarePlus product would do so by filing an appropriate election form with the organization. Disenrollment would be accomplished the same way. An individual failing to make an election during the initial election period would be deemed to have chosen the non-MedicarePlus option. An election would continue until the individual changed elections or the MedicarePlus product was discontinued. (New sec. 1805(c))

e. Assistance. The Secretary could enter into an agreement with the Commissioner of Social Security under which the Commissioner would be responsible for the administration of enrollment and disenrollment in MedicarePlus products. (New sec. 1805(c)(5))

f. Provision of Beneficiary Information to Promote Informed Choice. The Secretary would provide for activities to disseminate broadly information to current and prospective Medicare beneficiaries on the coverage options available in order to promote an active, informed selection among such options. The information would have to be provided so as to permit individuals to elect the MedicarePlus option during an initial election period. The Secretary would be required to contract with appropriate public and private entities to carry out such activities.

The Secretary would be required to provide for at least the following in all areas in which MedicarePlus products were offered: (1) publish and disseminate an information booklet during coverage election periods, including information in standardized format and in plain English on benefits and premiums, quality (including consumer satisfaction); and beneficiary rights and responsibilities; (2) maintain a toll-free number for inquiries regarding MedicarePlus options; and (3) include information in the Medicare Handbook on the MedicarePlus option. The information booklet would have to be updated regularly. (New sec. 1805(d))

g. Coverage Election Periods. For individuals newly eligible for Medicare after the transition period, elections would occur at the first time the individual both was entitled to benefits under Part A and enrolled under Part B. The transition period would be the period beginning when a MedicarePlus product first became available in an individual's area and ending with the month preceding the beginning of the first annual coordinated election period occurring in October 1997.

During the transition period, an individual who elected to enroll in the non-MedicarePlus option could change election to a MedicarePlus option at any time. An individual in a MedicarePlus product could change election to another MedicarePlus product or the non-MedicarePlus option.

In October, 1996, the Secretary would be required to conduct a MedicarePlus Health Fair which would provide for a nationally coordinated educational and publicity campaign to inform MedicarePlus eligible persons about MedicarePlus products and the election process, including the upcoming annual, coordinated election periods that would begin in October, 1997.

After the transition period, there would be an annual coordinated election period during October of each year (beginning 1997) in which individuals could change elections. An individual who elected the MedicarePlus product option (other than the high-deductible/medisave option) for the first time could discontinue such election through the filing of an appropriate notice for up to 90 days from the enrollment's effective date. An individual who discontinued an election would be deemed to have elected the Non-MedicarePlus option.

A person who had elected a high-deductible/medisave product could not change to a MedicarePlus option that was not a high-deductible/medisave product unless the individual made such change during an annual, coordinated election period, or the individual had had such election in effect for 12 months. The high-deductible/medisave option would become first available, effective January 1, 1997. Elections for 1997 would occur during the October 1996 election period.

Special election periods would be provided in which an individual could discontinue an election of a MedicarePlus product and make a new election if: (1) the organization's or product's certification was terminated or the organization terminated or otherwise discontinued providing the product; (2) the person who elected a MedicarePlus product was no longer eligible because of a change in residence or certain other changes in circumstances; (3) the individual demonstrated that the organization offering the product violated its contract with Medicare or misrepresented the product in its marketing; or (4) the individual met other conditions specified by the Secretary. (New sec. 1805(e))

h. Effectiveness of Elections. An election made during the initial election period would become effective when the individual became entitled to Medicare benefits, except as the Secretary might provide in order to prevent retroactive coverage. During the transition an election to discontinue a Medicare Plus option would take effect with the first calendar month after the election was made. In general, after the transition, elections made during an annual election period would take effect as of the first day of the following year. Elections during other periods would take effect in the manner specified by the Secretary to protect continuity of coverage. (New sec. 1805(f))

i. Payments to Plans in Lieu of Medicare Part A and Part B Payments. Payments under a contract with a MedicarePlus organization with respect to an individual electing a MedicarePlus product offered by an organization would be instead of the amounts which would otherwise been payable under Medicare Parts A and B. (New sec. 1805(g) of the House bill)

j. Administration. These provisions would be administered through an office in the Department of Health and Human Services that was separate from the Health Care Financing Administration, and whose primary function would be administration of the MedicarePlus and Medicare managed care programs. The director of this Division would be of equal pay and rank to that of the HCFA Administrator. The Secretary would be required to transfer personnel and other resources in HCFA to the newly designated division as are used to administer the current Medicare managed care program and as might be needed to administer than program and the requirements described above. (New sec. 1805(h))

Senate bill

a. In General. The Social Security Act would be amended to add a new Part D—Medicare Choice Plans, sections 1895A-1895S. Sec. 1895A provides for definitions; sec. 1895B provides for entitlement to Medicare choices. Additional sections provide for election and enrollment procedures. (New sec. 7001) *b. Types of Choices.* Every individual entitled to Medicare Part A and enrolled in Medicare Part B (except those with end stage renal disease) would be entitled to choose to receive benefits through two options: (1) through the existing (fee-for-service system ("traditional Medicare") or (2) by receiving payments toward the individual's enrollment in a Medicare Choice plan. Eligible Medicare Choice plans would include: an indemnity or fee-for-service plan; a coordinated care plan; or any other private plan for the delivery of health care. A coordinated care plan is defined as a private managed or coordinated care plan which provides health care services through an integrated network of providers including a qualified HMO, preferred provider organization plan (PPO), point-of-service plan, provider-sponsored network plan, or another coordinated care plan. A Medicare Choice plan also could be offered by a union, Taft-Hartley, or qualified association sponsor. (New sec. 1895A(b); 1895B)

c. Special Rules. In general, each Medicare choice eligible individual would be entitled to enroll in any Medicare Choice plan with a Medicare service area including the geographic area in which the individual resided. The Secretary would be required to establish special rules for enrollment of individuals in Medicare Choice plans that were union, Taft-Hartley, or association-sponsored plans. Individuals medically determined to have end stage renal disease would not be eligible to elect a Medicare Choice plan. (An individual who developed ESRD while enrolled in a Medicare Choice plan could continue to be enrolled in that plan.) By Dec. 31, 1999, the Secretary would be required to submit to Congress recommendations on expanding the definition of "Medicare Choice eligible individual" to include individuals with ESRD and the enrollment of such individuals in Medicare Choice plans. (New sec. 1895A(c)(2)(B) and 1895D(6))

d. Enrollment Procedures. Medicare Choice eligible individuals would enroll in any Choice plan serving the area in which they resided during (1) the annual open enrollment period; or (2) any specified other enrollment period that applied to the individual. Each eligible individual desiring to enroll or terminate enrollment would be required to provide the Secretary with notice during the enrollment period. To the extent feasible, the Secretary would be required to provide for the receipt of such notice by telephone, through the mail, and in person at local Social Security offices. The Secretary would be required to promptly provide each Choice plan with notice of an individual's enrollment or disenrollment. (New sec. 1895C(a) and 1895C(b))

e. Assistance in Enrollment Process. The Secretary would be authorized to enter into an agreement with the Commissioner of Social Security under which the Commissioner would perform administrative responsibilities relating to enrollment and disenrollment. (New sec. 1895C(e))

f. Provision of Information to Beneficiaries. By September 30 of each year after 1995, the Secretary would be required to mail a notice of eligibility to each Medicare Choice eligible individual and each individual entitled to benefits under Part A prior to the end of the annual open enrollment period. The Secretary would be required to mail a notice of eligibility to individuals who become newly eligible for Medicare Choice during additional enrollment periods no later than 2 months before their eligibility. The required notice and materials sent by the Secretary would have to include an informational brochure. Such information would have to be written in the most easily understandable manner possible and would have to include at least general information about coverage during the next year, including: (1) the Part B premium rates, (2) the deductible, copayment, and coinsurance amounts for coverage under traditional Medicare, (3) a description of the coverage under traditional Medicare and any changes in its coverage from the prior year, (4) a description of the individual's Medicare payment area, and the standardized per person Medicare payment amount; (4) information and instructions on how to enroll in a Medicare Choice plan, (5) the right of each Medicare Choice plan sponsor by law to terminate or refuse to renew its contract and the effect such termination could have on an enrollee, and (6) to the extent available, quality indicators for traditional Medicare and each Choice plan, including for the latter, disenrollment rates for the previous 2 years and information on satisfaction and health outcomes.

In addition, plan specific information would be required including: (1) the plan's Medicare service area; (2) the enrollee's rights to benefits under the plan, (including covered items and services and enrollee cost-sharing responsibilities); (3) the extent to which enrollees could select providers of their choice from within or outside the plan's network (if applicable) and the restrictions (if any) on the plan's payment for services furnished to enrollees by other than the plan's participating providers; (4) out-of-area coverage; (5) coverage of emergency services and urgently needed care; (6) enrollee appeal rights; (7) whether the plan was out of compliance with any Medicare Choice requirements; (8) the plan's premium price and an indication of the difference between the price and the standardized Medicare payment amount; and (9) any optional supplemental coverage available and its price. The Secretary could require additional information if he or she determined it would assist the individual's enrollment decision. To the maximum extent feasible, the Secretary would be required to contract with appropriate non-Federal entities to assist in providing notice and informational materials to Medicare Choice eligible individuals. (New sec. 1895C(c); 1895C(d); 1895C(e)(2))

g. Coverage Election Periods. Medicare Choice eligible individuals would enroll in any Choice plan serving the area in which they resided during (1) the annual open enrollment period; or (2) any other enrollment period that applied to the individual. With exceptions, an individual could not terminate enrollment before the next annual open enrollment period applicable to the individual. An individual could terminate enrollment if: (1) the individual moved to a new Medicare service area, or (2) the individual had experienced a qualifying event (as determined by the Secretary). An individual could terminate enrollment if the plan failed to meet quality or capacity standards or for other causes as determined by the Secretary.

After initial enrollment in a plan, an individual could terminate enrollment within 90 days and enroll in another Medicare Choice plan or traditional Medicare.

If an individual was enrolled in a Medicare Choice plan and failed to provide the Secretary with notice of his or her enrollment or disenrollment during any open enrollment period applicable to the individual, the individual would be deemed to have reenrolled in the plan.

Each Medicare Choice plan sponsor would be required to offer an annual open enrollment period in November of each year for the enrollment and termination of enrollment of Medicare choice eligible individuals for the next year. Each plan sponsor would be required to accept the enrollment of an individual in the plan: (1) during an initial Medicare enrollment period specified in section 1837 of existing law (relating to Medicare enrollment periods); and (2) during the period specified by the Secretary following any termination of the enrollment of the individual in a Medicare Choice plan. (New sec. 1895D(b); 1895(G)(b))

h. Effectiveness of Elections. An election during the annual open enrollment period would become effective for the calendar year following the open enrollment period. An individual enrolling in a special election period would be enrolled in the plan for the portion of the calendar year on or after the date on which the enrollment became effective (as specified by the Secretary). Except as specified above, an individual could not terminate enrollment before the next annual open enrollment period. (New sec. 1895D(b))

i. Payments to Plans in Lieu of Medicare Part A and Part B Payments. Payments under a contract to a Medicare Choice plan and any rebates (as described below) would be instead of the amounts which would have otherwise been payable under traditional Medicare for items and services furnished to individuals enrolled with the plan. (New sec. 1895D(c).

j. Administration. No provision.

Conference agreement

The conference agreement follows the House provision with *modifications.*

Section 8001 of the conference agreement would amend the Social Security Act to include a new Part C, new sections 1851 through 1859. New section 1851 includes provisions relating to: (a) choice of plans; (b) special rules, (c) providing information to promote informed choice, (d) coverage election periods, (e) effectiveness of elections, (f) guaranteed issue and renewal, (g) approval of marketing materials, (h) effect of election of MedicarePlus plan option, and (i) administration. (This represents a reordering of provisions in the House bill.)

With respect to types of choices, every MedicarePlus eligible individual could elect to receive benefits through FFS Medicare or through enrollment in a MedicarePlus plan which would include: (1) a coordinated care plan, including an HMO and PPO; (2) a combination of high deductible plan and contributions to a High-Deductible Medicare MSA; (3) plans offered by a PSO; (4) union, Taft-Hartley, or qualified association plan; (5) a fee-for-service plan that reimburses hospitals, physicians, and other providers on the basis of a privately determined fee schedule; and (6) other health care plans.

With respect to special rules, individuals medically determined to have ESRD would not be eligible to elect MedicarePlus, except that an individual who developed ESRD while enrolled could continue in that plan.

It is the intent of the conferees that not later than December 31, 1999, the Secretary would submit to Congress recommendations on expanding the definition of "MedicarePlus eligible individual" to include individuals with ESRD and the enrollment of such individuals in the MedicarePlus plans.

In the case of an individual who was enrolled with a coordinated care plan that offers a point-of-service option and who moved to an area outside the plan's service area, the Secretary would have to provide for continued enrollment with the plan.

An individual who was enrolled in the Federal Employees Health Benefit Plan would not be eligible to enroll in a high deductible plan until such time as the Director of the Office of Management and Budget certified to the Secretary that the Office of Personnel Management had adopted policies which would ensure that the enrollment of such individuals in such plans would not result in increased expenditures for the Federal Government for health benefit plans.

With respect to the provision of beneficiary information, the Secretary would be required to provide information directly to current and prospective Medicare beneficiaries on the MedicarePlus plans. First, at least 15 days before the beginning of each annual open enrollment period, the Secretary would be required to mail to each MedicarePlus eligible individual residing in an area a notice containing:

(1) General election information and information about the Medicare fee-for-service program;

(2) A list of plans and comparison of plan ;

(3) The Federal contribution amount with respect to the enrollment of the individual under a MedicarePlus plan;

(4) Additional information that the Secretary determined would assist in the individual's selection.

The mailing of such information would be coordinated with the mailing of the annual notice specified elsewhere in the bill.

Second, to the extent practicable and no later than 2 months before the beginning of the initial enrollment in Medicare, the Secretary would be required to mail the above described information to the individual. It would have to be written and formatted in the most easily understandable manner possible. The general election and plan information would have to be updated on at least an annual basis to reflect changes in MedicarePlus plans and the benefits and premiums for such plans. The conference agreement specifies the required elements of the general election information and information about the Medicare fee-for-service program and the information comparing plan options.

The MedicarePlus organizations would be required to provide to the Secretary the information on the organization and the plan it offered as the Secretary needed to meet these information requirements.

A MedicarePlus organization would be required to disclose, in a clear, accurate, and standardized form to each enrollee with a

MedicarePlus plan offered by the organization under this part at the time of the enrollment and at least annually thereafter, the following information regarding the plan: (1) service area, (2) benefits, (3) out-of-area coverage, (4) emergency coverage, (5) optional supplemental coverage, (6) prior authorization rules, (7) plan grievance procedures, and (8) the quality assurance program.

With respect to coverage election periods, the conference agreement modifies the special 90-day disenrollment option in the House provision. In the case of the first time an individual elected any MedicarePlus plan (other than a high deductible plan) offered by a particular MedicarePlus organization, the individual could disenroll within the first 90 days but the disenrollment option would apply only once for an individual with respect to any particular MedicarePlus organization and could not apply more than twice for any individual in a calendar year. The individual could elect a new option, or in the absence of such an election, would be deemed at the time of disenrollment to have elected the fee-for-service Medicare option.

With respect to payments to plans in lieu of Medicare Part A and Part B payments, the conference agreement clarifies that only the MedicarePlus organization would be entitled to receive Medicare payments from the Secretary for services furnished to the individual.

2. LICENSING AND FINANCIAL REQUIREMENTS FOR MEDICAREPLUS/MEDICARE CHOICE PLANS (SEC. 15002 OF THE HOUSE BILL; SEC 7001 OF THE SENATE BILL)

Current law

Under section 1876 of the Social Security Act, Medicare specifies requirements to be met by an organization seeking to become a managed care contractor with Medicare. In general, these include the following: (1) the entity must be organized under the laws of the State and be a Federally qualified HMO or meet specified requirements (provide physician, inpatient, laboratory, and other services, and provide out-of-area coverage); (2) the organization is paid a predetermined amount without regard to the frequency, extent, or kind of services actually delivered to a member; (3) the entity provides physicians' services primarily through physicians who are either employees or partners of the organization or through contracts with individual physicians or physician groups; (4) the entity assumes full financial risk on a prospective basis for the provision of covered services, except that it may obtain stop loss coverage and other insurance for catastrophic and other specified costs; and (5) the entity has made adequate protection against the risk of insolvency.

There is no provision under current law for high deductible/medisave products.

House bill

a. In General. The Social Security Act would be amended to create a new Part C—Provisions Relating to MedicarePlus Organizations; High Deductible/Medisave Products. (Sec. 15002 which establishes new sec. 1851 through 1858 of the Social Security Act) *b. Entity Defined.* A MedicarePlus organization would be defined as a public or private entity certified (as described below) as meeting the requirements described in the following provisions. (New sec. 1851(a))

c. Organized and Licensed under State Law. In general, a MedicarePlus organization would have to be organized and licensed under State law to offer health insurance or health benefits coverage in each State in which it offered a MedicarePlus product. This would not apply to a union or Taft-Hartley sponsor, a qualified association, or a provider-sponsored organization (PSO). (New sec. 1851(b))

d. Prepaid Payment. A MedicarePlus organization would have to be compensated (except for deductibles, coinsurance, and copayments) by a fixed payment paid on a periodic basis and without regard to the frequency, extent, or kind of health care services actually provided to an enrollee. (New sec. 1851(c))

e. Assumption of Full Financial Risk. The organization would have to assume full financial risk on a prospective basis for the provision of health services (other than hospice care) except the organization could obtain insurance or make other arrangements for: stop-loss coverage for aggregate costs in excess of $5,000; services needing to be provided other than through the organization; and for no more than 90 percent of the amount by which its costs for any of its fiscal years exceeded 115 percent of its income for such year. It could also make arrangements with providers or health institutions to assume all or part of the risk on a prospective basis for the provision of basic services. This requirement would not apply to a union or Taft-Hartley sponsor, or a qualified association with respect to MedicarePlus products offered by such organization and issued by an organization required to be organized and licensed under State law or by a provider-sponsored organization (PSO). (New sec. 1851(d))

f. Provision Against Risk of Insolvency. Each MedicarePlus organization would have to meet standards relating to financial solvency and capital adequacy, as specified below. An entity that is a union or Taft-Hartley plan would be deemed to meet this requirement. Additionally, a qualified association would also be deemed to meet this requirement with respect to MedicarePlus products if the product offered by the association and issued by an organization was one that was organized and licensed under State law or was a provider-sponsored organization (PSO). (New sec. 1851(e))

g. High Deductible/Medical Saving Account Definition. The bill authorizes a Medisave option within MedicarePlus. A Medisave plan combines high deductible insurance with a medical savings account. High deductible insurance would provide reimbursement for Medicare benefits and others the plan may elect to provide only after the enrollee incurred annual expenses equal to a deductible of not greater than $10,000. These thresholds would be increased yearly (and rounded to the nearest $50) by the percentage increase in the national average per capita growth rate (described below). For purposes of the deductible, the insurance would have to at a minimum count all expenses that would have been payable by Medicare and the enrollee under parts A and B. After the deductible was met, the insurance would have to reimburse all expenses that would have been paid without regard to deductibles or coinsurance under parts A and B. (New sec. 1851(f))

h. Organizations Treated as MedicarePlus/Medicare Choice Plans During Transition. Certain organizations would be considered qualified as MedicarePlus organizations for contract years beginning before January 1, 1998. These include:

HMOs organized under State law that are qualified under the Public Health Service Act; an organization that is recognized under State law as an HMO; or a similar organization regulated for solvency in the same manner and extent as an HMO.

Organizations that are organized under State laws and are licensed by a State agency as a health insurer or as a service benefit plan, but only for individuals residing in an area in which the organization is licensed to offer health insurance coverage; and

Organizations with Medicare risk contracts as of the date of enactment. (New sec. 1851(g))

i. Medigrant Demonstration Projects. The Secretary would be required to provide, in at least 10 States, for demonstration projects which would permit Medigrant programs under title XXI of the Social Security Act (Medicaid) to be treated as MedicarePlus organizations for individuals who are qualified to elect the MedicarePlus option and who are eligible to receive medical assistance under Medigrant. The purpose of such projects would be to demonstrate the delivery of primary, acute, and long-term care through an integrated delivery network which emphasized noninstitutional care. (New sec. 1851(h))

Senate bill

a. In General. The Social Security Act would be amended to create a new Part D—Medicare Choice Plans. New sections 1895A through 1895S would be added, including provisions establishing licensing and financial requirements for Medicare Choice plans. (New sec. 1895A and 1895I of Senate bill)

b. Entity Defined. A Medicare Choice plan would be defined to mean an eligible health plan with respect to which there was a contract in effect with Medicare to provide health benefits coverage to Medicare Choice eligible individuals. A Medicare Choice plan sponsor would be defined as a public or private entity which established or maintained a Medicare Choice plan. (New sec. 1895A(a))

c. Organized and Licensed Under State Law. In general, a Medicare Choice plan would be required to be organized and licensed under applicable State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which a Medicare Choice plan enrolled individuals under this part. This would not apply to a union, Taft-Hartley, or association plan if the plan were exempt from State law requirements under ERISA. The requirement would apply to coordinated care plans except to the extent that such plans were subject to the temporary Federal certification process described below. (New sec. 1895I)

d. Prepaid Payment. A Medicare Choice plan would be compensated (except for deductibles, coinsurance, and copayments) by a fixed payment paid by the Secretary (and, where appropriate, the individual) on a periodic basis and without regard to the frequency, extent, or kind of health care service actually provided to the enrollee. In the event that a Medicare enrollee in a Medicare Choice plan received additional benefits as a result of a national coverage determination or due to overlapping periods of coverage, only the plan sponsor would be entitled to receive payments from the Secretary for services furnished to the individual. (New sec. 1895I(d))

e. Assumption of Full Financial Risk. The Medicare Choice plan sponsor would have to assume full financial risk on a prospective basis for the provision of health services except the sponsor could obtain insurance or make other arrangements for: stop-loss coverage for aggregate costs in excess of $5,000; services needing to be provided other than through the plan sponsor; and for no more than 90 percent of the amount by which its costs for any of its fiscal years exceeded 115 percent of its income for such year. It could also make arrangements with providers or health institutions to assume all or part of the risk on a prospective basis for the provision of basic services. (New sec. 1895I(b))

f. Protection Against Risk of Insolvency. A Medicare Choice plan would be required to make adequate protection against the risk of insolvency (including provisions to prevent enrollees from being held liable to any person or entity for the plan sponsor's debts in the event of the plan sponsor's insolvency) as determined by the Secretary, or as determined by a State which the Secretary determined requires solvency standards at least as stringent as those set by the Secretary. In establishing solvency standards for coordinated care plans, the Secretary would be required to consult with interested parties and take into account: (1) a coordinated care plan sponsor's delivery system assets and its ability to provide services directly to enrollees through affiliated providers, and (2) alternative means of protecting against insolvency, including reinsurance, unrestricted surplus, letters of credit, guarantees, organizational insurance coverage, and partnerships with other licensed entities.

The Secretary would not be required to include the alternative means described above but could consider such alternatives where consistent with the standards. (New sec. 1895I(c))

g. High Deductible/Medical Savings Account Definition. No provision.

h. Organizations Treated as MedicarePlus/Medicare Choice Plans During Transition. No provision (but see new sec. 1895R(e) for treatment of plans that could be considered Federally certified under temporary Federal certification process for coordinated care plans).

i. Medigrant Demonstration. No provision.

Conference agreement

The conference agreement follows the House provision with modifications:

With respect to the requirement that an entity be organized and licensed under State law, the conference agreement provides that a MedicarePlus organization would be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offered a MedicarePlus plan. The exception for certain union and Taft-Hartley sponsors would apply if the plan was exempt from State law requirements under ERISA.

An exception to the general requirement that a MedicarePlus plan be organized and licensed in a State would apply if the State required that the organization, as a condition of licensure, to offer any product or plan other than a MedicarePlus plan. In addition, an exception would apply in cases of unreasonable barriers to market entry. The conference agreement would provide for a MedicarePlus organization to apply to the Secretary for a waiver of the requirement, and specifies the standard on which the Secretary would determine whether to grant the waiver and the timing for doing so.

Special rules for PSOs would apply. In general, a PSO that sought to offer a MedicarePlus plan in a State could apply for a waiver of the State organization and licensure requirement for an organization in that State. The Secretary would be required to act on the application within 60 days after it was filed and would grant a waiver for an organization with respect to a State if the Secretary determined that:

(1) the State had failed to substantially complete action on a licensing application within 90 days of the receipt of a completed application, or

(2) the State denied such a licensing application and (a) the State's licensing standards or review process imposed any requirements, procedures, or other standards on such organizations that were not generally applicable to any other entities engaged in substantially similar business; (b) such standards or review process applied solvency standards and the State did not have approval to do so; and (c) the State used solvency standards to deny or discriminate against such an organization that had been provided a Federal certificate of solvency (as provided for in this bill). No period before the date of enactment could be included in determining the 90 day period described above.

In the case of a waiver granted under this paragraph for a PSO:

(1) the waiver would be effective for a 36-month period except it could be renewed based on a subsequent application filed during the last 6 months of such period;

(2) the waiver would be conditioned upon the pendency of the licensure application during the period the waiver was in effect; and

(3) any provision of State law related to the licensing of the organization and which prohibited the organization from providing coverage pursuant to a MedicarePlus contract would be preempted.

In the case of a waiver granted for a PSO, any provision of State law which related to the licensing of the organization and which prohibited the organization from providing coverage under a MedicarePlus contract would be superseded.

It is the intent of the conferees that nothing in this section restricts the ability of a State to operate a hospital reimbursement system recognized under section 1814(b) of the Social Security Act or to require payments by PSOs to be made on the basis of such system.

With respect to assumption of full financial risk, the conference agreement clarifies that a MedicarePlus organization would not have to accept full financial risk for hospice care. However, MedicarePlus organizations would have the option of assuming full financial risk as under current law.

The conference agreement includes an amendment relating to solvency requirements for PSOs. In the case of an entity that was a PSO operating in an approved State (as described below), the organization would have to meet solvency standards through licensure by the State. In the case of an entity that was a PSO operating in a State that had not been approved, then the organization would be required to meet solvency standards through application and certification licensure by the Secretary. The Secretary would be required to establish a process under which a State could apply to the Secretary for a determination that the State was applying to PSOs, through its process for licensing PSOs, solvency standards that were consistent with the solvency standards established below (see sec. 1856(c)). The Secretary would be required to approve such a State if he or she determined that the State was applying the standards. If the Secretary denied approval, the State could reapply for a determination. The Secretary would be required to publish a list of States that were approved.

The conference agreement modifies the definition of the high deductible plan. For the contract year 1997, the deductible could be no more than $6,000.

The conference agreement does not include the Medigrant Demonstration Projects. However, it is the intent of the conferees that the Secretary provide, in at least 10 States, for demonstration projects which would permit Medigrant programs under title XXI of the Social Security Act (Medicaid) to be treated as MedicarePlus organizations for individuals who are qualified to elect the MedicarePlus option and who are eligible to receive medical assistance under Medigrant. The purpose of such projects would be to demonstrate the delivery of primary, acute, and long-term care through an integrated delivery network which emphasized noninstitutional care.

3. REQUIREMENTS RELATING TO BENEFITS, PROVISION OF SERVICES, ENROLLMENT, AND PREMIUMS (NEW SEC. 1852 OF HOUSE BILL; NEW SEC. 1895A, 1895C, 1895D, 1895G, 1895H, 1895J, 1895N, 1895R OF SENATE BILL)

Current law

Section 1876 provides for requirements relating to benefits, payment to the plans by Medicare, and payments to the plans by beneficiaries. In addition, it specifies standards for patient protection, quality assurance, and general contractor requirements.

A Medicare beneficiary enrolled in an HMO/CMP is entitled to receive all services and supplies covered under Medicare Parts A and B (or Part B only, if only enrolled in Part B). These services must be provided directly by the organization or under arrangements with the organization. Enrollees in risk-based organizations are required to receive all services from the HMO/CMP except in emergencies.

In general, HMOs/CMPs offer benefits in addition to those provided under Medicare's benefit package. In certain cases, the beneficiary has the option of selecting the additional benefits, while in other cases some or all of the supplementary benefits are mandatory.

Some entities may require members to accept additional benefits (and pay extra for them in some cases). These required additional services may be approved by the Secretary if it is determined that the provision of such additional services will not discourage enrollment in the organization by other Medicare beneficiaries.

The amount an HMO/CMP may charge for additional benefits is based on a comparison of the entity's adjusted community rate (ACR, essentially the estimated market price) for the Medicare package and the average of the Medicare per capita payment rate. A risk-based organization is required to offer "additional benefits" at no additional charge if the organization achieves a savings from Medicare. This "savings" occurs if the ACR for the Medicare package is less than the average of the per capita Medicare payment rates. The difference between the two is the amount available to pay additional benefits to enrollees. These may include types of services not covered, such as outpatient prescription drugs, or waivers of coverage limits, such as Medicare's lifetime limit on inpatient hospital care. The organization might also waive some or all of the Medicare's cost-sharing requirements.

The entity may elect to have a portion of its "savings" placed in a benefit stabilization fund. The purpose of this fund is to permit the entity to continue to offer the same set of benefits in future years even if the revenues available to finance those benefits diminish. Any amounts not provided as additional benefits or placed in a stabilization fund would be offset by a reduction in Medicare's payment rate.

If the difference between the average Medicare payment rate and the adjusted ACR is insufficient to cover the cost of additional benefits, the HMO/CMP may charge a supplemental premium or impose additional cost-sharing charges. If, on the other hand, the HMO does not offer additional benefits equal in value to the difference between the ACR and the average Medicare payment, the Medicare payments are reduced until the average payment is equal to the sum of the ACR and the value of the additional benefits.

For the basic Medicare covered services, premiums and the projected average amount of any other cost-sharing may not exceed what would have been paid by the average enrollee under Medicare rules if she or he had not joined the HMO. For supplementary services, premiums and projected average cost-sharing may not exceed what the HMO would have charged for the same set of services in the private market.

HMOs/CMPs contracting with Medicare can pay second to workers' compensation, automobile liability or other specified sources of insurance.

Current law also provides for Medicare managed care contracts with Health Care Prepayment Plans (HCPPs). An HCPP arrangement is similar to a TEFRA cost-contract except that it provides only Part B services. There are no specific statutory conditions to qualify for an HCPP contract.

Collectively bargained health plans and those sponsored by private multiemployer health plans (most of which are Taft-Hartley plans) are regulated under the Employee Retirement Income Security Act (ERISA). Under ERISA, the States are authorized to regulate multiple employer welfare arrangements (MEWAs) to the extent that such regulation does not conflict with ERISA. Association plans may or may not be regulated as MEWAs and are generally regulated by the States.

Penalties apply for violations of limits on the use of "physician incentive plans," i.e., compensation arrangements between HMOs and physicians that might induce physicians to withhold services. An HMO may not make a specific payment to a physician as an inducement to reduce or limit services to a specific enrollee. In addition, if physicians or physician groups are placed at substantial financial risk for services other than their own, the HMO must provide adequate stop-loss protection to limit the physicians' potential liability and must periodically survey enrollee satisfaction.

There are no provisions in current law for provider protections, or for the Department of Labor to play a role in establishing and enforcing Medicare contractor standards for employer-sponsored health plans. In addition, there is no provision in current law for high-deductible/medisave products.

House bill

a. Basic Benefits Covered. Each MedicarePlus product would be required to provide benefits for at least the items and services for which benefits are available under parts A and B consistent with the standards for coverage of such items and services. A MedicarePlus product would meet this requirement if:

(1) in the case of benefits furnished through fee-for-service providers, the product provided for at least the dollar amount of payment for such items and services as would otherwise have been provided under Medicare Parts A and B; and

(2) in the case of benefits furnished through providers with a contract with the organization, the individual's liability for payment for services did not exceed (after taking into account any deductible which did not exceed any deductible under Parts A and B) the lesser of: (a) the amount of liability that the individual would have had (based on the provider being a participating provider) if the individual had elected the non-MedicarePlus option, or (b) the applicable coinsurance or copayment amounts (that would have applied under the non-MedicarePlus option) provided under the contract. (New sec. 1852(a))

b. Antidiscrimination. A MedicarePlus organization could not deny, limit, or condition the coverage or provision of benefits under this part based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability of an individual. (New sec. 1852(b))

c. Guaranteed Issue and Renewal/General Availability and Capacity Limits. Generally, a MedicarePlus organization would be required to provide that at any time during which elections were accepted, it would have to accept without restrictions individuals eligible to make such an election. If the Secretary determined that the organization had a capacity limit and the number of individuals who elected the product exceeded that limit, the organization could limit the election of individuals, but only if priority was given first to those individuals who had already elected the product, and then to others in a manner which did not discriminate. A MedicarePlus organization could not terminate or refuse to accept an individual's election except in the event of nonpayment of premiums, disruptive behavior, or the product was terminated with respect to all eligible Medicare individuals. (Those terminated would be deemed to have elected the non-MedicarePlus option). (New sec. 1852(c))

d. Special Rules for Limited Enrollment Organizations. MedicarePlus sponsors would have to limit enrollment for MedicarePlus products to specific individuals. A union sponsor would have to limit eligibility to individuals who were members and affiliated with the sponsor through an employment relationship or were the spouses of such members. A Taft-Hartley sponsor would have to limit eligibility to individuals who were entitled to obtain benefits under the terms of an applicable collective bargaining agreement.

A qualified association would be defined as an individual-membership association, religious fraternal organization, or other organization (a trade, industry, or professional association, a chamber of commerce, or a public entity association) that the Secretary found (1) was formed for purposes other than the sale of health insurance and did not restrict membership based on the health status, claims experience, receipt of health care, medical history, or lack of insurability of an individual; (2) did not exist solely or principally for the purposes of selling insurance; and (3) had at least 1,000 individual members. Association sponsors would have to limit eligibility to individuals who were members of the association (or their spouses). Associations could not terminate coverage of an individual because the individual was no longer an association member except pursuant to a change of election during an open election period occurring on or after the date of termination of membership.

These eligibility rules could not have the effect of denying eligibility to individuals on the basis of health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability. (New sec. 1852(c)(4))

e. Submission and Charging of Premiums. Each MedicarePlus organization would be required annually to file with the Secretary the amount of the monthly premium for coverage under each of its products it would be offering in each payment area, and the enrollment capacity in relation to the product in each such area. The premium charged for a product offered in a payment area would equal $\frac{1}{12}$ of the amount (if any) by which the premium exceeded the MedicarePlus capitation rate (see below). Premiums could not vary among individuals who resided in the same payment area. An exception would apply to high-deductible/Medisave products which would be experience-rated based on specified risk factors. (These factors would be the identical demographic and other adjustments used for setting the MedicarePlus contribution level.) Each

MedicarePlus organization would have to permit monthly payment of premiums. An organization could terminate election of individuals for a MedicarePlus product for failure to make premium payments but only under specified conditions.

In no case could the portion of a MedicarePlus organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments attributable to the minimum benefits (and not counting any amount attributable to balance billing) exceed the actuarial value of the coinsurance and deductible applicable in the non-MedicarePlus option. (New sec. 1852(d))

f. Requirement for Additional Benefits, Part B Premium Discount Rebates, or Both. If the actuarial value of the benefits under the MedicarePlus product (as determined based upon the adjusted community rate (ACR)—see below) for individuals was less than the average of the capitation payments made to the organization for the product at the beginning of an annual contract period, the organization could provide additional benefits, a monetary rebate (paid on a monthly basis) of the Part B monthly premium, or a combination of both. The value of these benefits, rebates or combination thereof would have to be at least as much as the amount by which the capitation payment exceeded the ACR, and would have to be applied uniformly for all enrollees in a product area. The rebate could not exceed the amount of the Part B premium (not taking into account penalties for late enrollment or the amount incurred as a result of affluence testing). The organization could provide that a part of the excess be withheld for the organization's stabilization fund. A MedicarePlus organization could provide additional benefits (over and above those required to be added as a result of the excess payment), and could impose a premium for such additional benefits. Cash or other types of rebates to induce enrollment or otherwise would be prohibited.

A MedicarePlus organization could provide that a part of the value of the excess actuarial amount be withheld and reserved in the HI and SMI trust funds (in such proportions as the Secretary determined to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits and rebates offered in those subsequent periods. Leftover amounts not provided as additional benefits would revert to the trust funds.

The Adjusted Community Rate (ACR) would mean, at the election of the MedicarePlus organization, either the rate of payment services which the Secretary annually determined would apply to the individuals electing a MedicarePlus product if the payment were determined under a community rating system, or the portion of the weighted aggregate premium which the Secretary annually estimated would apply to the individual but adjusted for differences between the utilization of individuals under Medicare and the utilization of other enrollees (or through another specified manner). For PSOs, the ACR could be computed using data in the general commercial marketplace or (during the transition period) based on the costs incurred by the organization in providing such a product. (New sec. 1852(e))

g. Rules Regarding Physician Participation. Each MedicarePlus organization would be required to establish reasonable procedures relating to the participation of physicians by providing: (a) notice of rules of participation, (b) written notice of participation decisions that are adverse to providers, and (c) a process within the organization for appealing adverse decisions, including the presentation of information and views of the provider regarding such decision. The organization would be required to consult with physicians who have entered into participation agreements with the organization regarding the organization's medical policy, quality and credentialing criteria, and medical management procedures.

Each MedicarePlus organization would be prohibited from operating any physician incentive plan (i.e., any compensation arrangement between a MedicarePlus organization and a physician or physician group that directly or indirectly has the effect of reducing or limiting services provided to enrollees) unless certain requirements were met: (1) No specific payment could be made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee; (2) if a plan placed a physician or physician group at substantial financial risk for services not provided by the physician or group, the organization provided adequate and appropriate stop-loss protection and conducted periodic surveys of both individuals enrolled and previously enrolled to determine their degree of access to services and satisfaction with the quality of those services; and (3) the organization provided to the Secretary descriptive information sufficient to determine the plan's compliance.

A MedicarePlus organization would not be able to provide (directly or indirectly) for a provider (or group of providers) to indemnify the organization against any liability resulting from a civil action brought by or on behalf of an enrollee for any damage caused to the enrollee by the organization's denial of medically necessary care.

MedicarePlus fee-for-service plans (those organizations that do not have agreements between physicians and the organizations for the provision of services) would be exempt from these requirements. (New sec. 1852(f))

h. Provision of Information by Plan to Secretary. Each MedicarePlus organization would be required to provide the Secretary with the information needed to prepare the information booklet described above. (New sec. 1852(g))

i. Coordinated Acute and Long-Term Care Benefits under MedicarePlus/Medicare Choice. States would be able to coordinate benefits under their MediGrant programs with those provided under a MedicarePlus product to assure continuity of a full range of acute and long-term care services to eligible poor elderly or disabled individuals. (New sec. 1852(h))

j. Transitional File and Use for Certain Requirements. In the case of MedicarePlus products proposed to be offered during the transition period, contractors could submit information to the Secretary demonstrating that the product met the requirements and standards relating to benefits and premiums. If the Secretary did not disapprove the product within 60 days, the product would be deemed as meeting these requirements. Contractors would still have to meet other MedicarePlus contract requirements and standards. (New sec. 1852(i))

k. Supplemental Benefits. A MedicarePlus Organization would be able to provide health care benefits in addition to benefits otherwise required and could charge a premium for such additional benefits (New sec. 1852(e)(1)(F))

l. Cost-Sharing. In no case could the portion of a MedicarePlus organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments attributable to the minimum benefits (and not counting any amount attributable to balance billing) exceed the actuarial value of the coinsurance and deductible applicable in the non-MedicarePlus option. (New sec. 1851(d)(5))

m. Organization as Secondary-Payer. The MedicarePlus organization could pay second in specified cases. (New sec. 1852(a)(2))

n. National Coverage Determination. See sec. 15721 of the House bill as described under Subtitle H.

o. Point-of-Service Coverage. No provision.

p. Prompt Payment. No provision.

Senate bill

a. Basic Benefits Covered. Each Medicare Choice plan would be required to provide to Medicare enrollees, through providers and other persons that meet the applicable requirements of Medicare and Part A of title XI (relating to General Provisions of the Social Security Act), those items and services covered under Medicare Part A and Part B which are available to individuals residing in the Medicare service area of the plan and additional health services as the Secretary might approve. The Secretary would be required to approve any such additional health care services which the plan proposed to offer to Medicare enrollees, unless the Secretary determined that including such additional services would substantially discourage enrollment by Medicare Choice eligible individuals. (New sec. 1895H(a))

b. Antidiscrimination. Each Medicare Choice plan would have to provide assurances to the Secretary that it would not deny enrollment to, expel, or refuse to reenroll any such individual because of the individual's health status or requirements for health care services, and that it would notify each individual of such fact at the time of their enrollment. (New sec. 1895J(e)(1))

c. Guaranteed Issue and Renewal/General Availability and Capacity Limits. Each Medicare Choice plan sponsor would be required to provide that each eligible individual would be eligible to enroll in the plan during an applicable enrollment period if the plan's Medicare service area included the geographic area in which the individual resided. Each sponsor would have to provide that, at any time during which enrollments were accepted, the sponsor would accept eligible individuals in the order in which they applied up to the limits of the plan's capacity (as determined by the Secretary) and without restrictions, except as might be authorized in regulations. The preceding sentence would not apply if it would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the Medicare population in the Medicare service area of the plan.

Each plan sponsor would be required to protide the Secretary with a demonstration of the plan's capacity to adequately service its expected enrollment. A plan could not cancel or refuse to renew a beneficiary except in the case of fraud or nonpayment of premiums. (New sec. 1895G(a), 1895J(d), 1895J(e)(1))

d. Special Rules for Limited Enrollment Organizations. A Medicare Choice plan sponsor of a union, Taft-Hartley plan, or association plan would be required to limit its enrollment to members of the sponsoring group who were entitled to all rights and privileges of any other members of the group and spouses of such members. An association plan sponsored by a religious fraternal benefit society could limit membership to individuals who shared the same religious convictions as the society.

A "union or association plan" is defined to mean an eligible health plan with a union sponsor, a Taft Hartley sponsor, or a qualified association sponsor that: (1) was organized for purposes other than to market a health plan; (2) could not condition its membership on health status, health claims experience, receipt of health care, medical history, or lack of evidence of insurability of a potential member; (3) could not exclude a member or spouse from health plan coverage based on those factors in item 2; (4) was a permanent entity which received a substantial majority of its financial support from active members; and (5) could not be owned or controlled by an insurance company. A "qualified association sponsor" is defined as an association, religious fraternal organization, or other organization (which could be a trade, industry, or professional association, chamber of commerce, or a public entity association) which established or maintained eligible health plans. (New sec. 1895A(b)(2); 1895G(a))

e. Submission and Charging of Premiums. Each Medicare Choice plan sponsor would be required annually to file with the Secretary the amount of the monthly premium for coverage under each of the plans it would be offering in each Medicare service area in which the plan was being offered. The enrolled individual: (1) would receive a rebate (as described below) if the plan's premium was less than the standardized Medicare payment amount; and (2) would be required to pay the plan's premium in excess of the standardized payment amount. The premiums charged by a plan sponsor could not vary among individuals who resided in the same Medicare payment area. Each plan sponsor would be required to permit monthly payment of monthly premiums. (New sec. 1895D(a); 1895N(a))

f. Requirement for Additional Benefits, Part B Premium Discount Rebates, or Both. If the standardized Medicare payment amount for the Medicare payment area in which an individual resided exceeded the amount of the monthly premium for the plan, the Secretary would be required to: (1) pay to the plan sponsor on behalf of the individual the monthly amount equal to the 100 percent of the excess for supplemental benefits; or (2) pay to the individual an amount equal to 75 percent of the remainder of such excess and deposit the remainder of the excess in the Federal Hospital Insurance Trust Fund. Rebates would have to be paid on a monthly basis from the Trust Funds on a proportional basis as specified. (New sec. 1895N(b)) *g. Rules Regarding Physician Participation.* No provision.

h. Provision of Information by Plan to Secretary. Each Medicare Choice plan sponsor would be required to provide such information as the Secretary requested with respect to its Medicare Choice plan in order to carry out activities relating to the Secretary's provision of plan information to beneficiaries. (New sec. 1895C(e)(3)).

i. Coordinated Acute and Long-Term Care Benefits under MedicarePlus/Medicare Choice. No provision.

j. Transitional File and Use for Certain Requirements. No provision (but see 1895R)

k. Supplemental Benefits. Each Medicare Choice plan could offer optional supplemental benefits for an additional premium. If the supplemental benefits were offered only to Medicare enrollees, the additional premium would have to be the same for all enrolled individuals in the Medicare payment area. Supplemental benefits could be marketed and sold by the sponsor outside of the enrollment process. (New sec. 1895H(b))

l. Cost-Sharing. The total deductibles, coinsurance, and copayments charged an individual under a Medicare Choice plan for basic benefits for a year could not exceed the average total amount of deductibles, coinsurance, and copayments charged an individual under the traditional Medicare program for a year. If the Secretary determined that adequate data were unavailable to determine the average cost-sharing under the plan, the Secretary could determine the amount with respect to all individuals in the Medicare payment area, the State, or in the U.S., eligible to enroll in the plan or on the basis of other appropriate data. (New sec. 1895H(c))

m. Organization as Secondary Payer. The Medicare Choice plan sponsor could pay second in specified cases. (New sec. 1895H(f))

n. National Coverage Determinations. If a national coverage determination was made in the period beginning on the date of an announcement of Medicare payment rates and ending on the date of the next announcement that the Secretary projected would produce a significant change in costs to the Medicare Choice plan and that the change in costs was not reflected in the Medicare payment amounts for that period: (1) the determination would not apply to contracts until the first contract year beginning after the end of such period, and (2) if the coverage determination provided for coverage of additional benefits or under additional circumstances, the individual would not obtain such coverage until the first contract year beginning after the end of such period unless otherwise required by law. (New sec. 1895H(d))

o. Point-of-Service Coverage. If a Medicare Choice sponsor offered a Choice plan that limited benefits to items and services furnished only by providers in a network of providers which contracted with the sponsor, the sponsor would also have to offer, at the time of enrollment, a Medicare Choice plan that permitted payment to be made under the plan for services obtained out of network by the individual (i.e., a point-of-service option). (New sec. 1895G(a)(3)) *p. Prompt Payment.* Each Medicare Choice plan sponsor would be required to provide prompt payment consistent with existing provisions of law of claims submitted for services and supplies furnished to Medicare enrollees if the services or supplies were not furnished under a contract between the plan and the provider or supplier. In the case of a plan sponsor which the Secretary determined, after notice and opportunity for a hearing, had failed to make prompt payment, the Secretary could provide for direct payment of the amounts owed. If this occurred, the Secretary would provide for an appropriate reduction in the amount of payments otherwise made to the plan sponsor. (New sec. 1895J(f))

Conference agreement

The conference agreement follows the House provision with modifications.

New section 1852 of the Social Security Act would provide for "Benefits and Beneficiary Protections," which incorporates largely House provisions on benefits and patient protection standards. The conference agreement also establishes a new section 1855, "Premiums and Rebates," which largely incorporates provisions of the House bill on the submission and charging of premiums.

With respect to basic benefits covered, the MedicarePlus plan would have to provide benefits to members through providers and other persons who meet the applicable requirements of Medicare and part A of title XI of the Social Security Act. The plan would have to provide such additional health services as the Secretary might approve. The Secretary would be required to approve any such additional health care services which the plan proposed to offer to such members, unless the Secretary determined that including such additional services would substantially discourage enrollment by MedicarePlus eligible individuals with the plan.

It is the conferees' intent that Christian Science nursing facility services that are currently covered under Part A of Medicare should be made available by MedicarePlus plans to enrollees who choose to use such services.

A MedicarePlus organization would be required to notify each MedicarePlus plan enrollee of the antidiscrimination protections at the time of the individual's enrollment.

The conference agreement modifies the House provision relating to priority of enrollment in the case of a plan reaching capacity limits. The priority rules would not apply if they would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the Medicare population in the service area of the plan.

The conference agreement modifies the definition of a qualified association plan to require that it not be owned or controlled by an insurance company.

The conference agreement includes the Senate provision relating to supplemental benefits. Each Medicare Choice plan could offer optional supplemental benefits for an additional premium. If the supplemental benefits were offered only to Medicare enrollees, the additional premium would have to be the same for all enrolled individuals in the Medicare payment area. Supplemental benefits could be marketed and sold by the sponsor outside of the enrollment process.

The conference agreement includes the Senate provision relating to national coverage determinations. If a national coverage determination was made in the period beginning on the date of an announcement of Medicare payment rates and ending on the date of the next announcement that the Secretary projected would produce a significant change in costs to the MedicarePlus plan and that the change in costs was not reflected in the Medicare payment amounts for that period: (1) the determination would not apply to contracts until the first contract year beginning after the end of such period, and (2) if the coverage determination provided for coverage of additional benefits or under additional circumstances, the individual would not obtain such coverage until the first contract year beginning after the end of such period unless otherwise required by law.

The conference agreement establishes a new section on "Premiums and Rebates" modifying the House bill. The agreement defines the term "monthly premium" with respect to a MedicarePlus plan as the monthly premium filed with the Secretary for coverage for services, not taking into account the amount of any payment made to the plan by Medicare. It defines the term "net monthly premium" with respect to such plan and an individual enrolled with it as the "monthly premium" reduced by the payment made toward such premium by Medicare. In no case could the portion of the monthly premium for a MedicarePlus plan for an area and year attributable to required services exceed the ACR for the plan.

The net monthly premium charged by a MedicarePlus organization for a Medicare plan in a payment area to an individual would be equal to the amount (if any) by which

(1) the amount of the monthly premium for the plan involved exceeded

(2) $1/12$ of the annual MedicarePlus capitation rate for the area and year involved.

The requirement that there be a uniform premium within a payment area would apply to both the monthly premium and the net monthly premium (including rebates offered by a MedicarePlus organization).

With respect to rebates, the conference agreement includes the following provision: To the extent that the adjusted excess amount exceeded the value of additional benefits provided by the organization, then the organization would have to provide for payment of the amount of such excess as follows: (1) If the individual had a Rebate MSA and elected a rebate, the organization would have to pay the excess into the MSA. (2) Otherwise, the organization would have to pay 75% of the excess to the individual and 25% to the Hospital Insurance Trust Fund. The conference agreement does not include the House provision limiting cash rebates to the Part B premium amount.

4. PATIENT PROTECTION STANDARDS (NEW SEC. 1853 OF HOUSE BILL; NEW SEC. 1895C, 1895(G), AND 1895(J) OF SENATE BILL)

Current law

Medicare HMOs/CMPs must provide enrollees, at the time of enrollment and annually thereafter, an explanation of rights to benefits, restrictions on services provided through nonaffiliated providers, out-of-area coverage, coverage of emergency and urgently needed services, and appeal rights.

Medicare HMOs/CMPs must make all Medicare covered services and all other services contracted for available and accessible within its service area, with reasonable promptness and in a manner that assures continuity of care. Urgent care must be available and accessible 24 hours a day and 7 days a week. HMOs must also pay for services provided by nonaffiliated providers when services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable, given the circumstances, to obtain the services through the HMO.

Medicare HMOs/CMPs must enroll individuals and provide covered services to enrollees who live within the geographic area served by the organization. Regulations provide that geographic area means the area found by HCFA to be that within which the HMO furnishes, or arranges for furnishing, the full range of services it offers to its Medicare enrollees.

HMOs/CMPs are required to have arrangements for an ongoing quality assurance program that stresses health outcomes and provides review by physicians and other health care professionals of the process followed in the provision of health services. External review is conducted by a peer review organization (PRO), one of the groups that has contracted with the Secretary for review of the quality and appropriateness of hospital services. PRO reviews of HMOs/CMPs covers both inpatient and outpatient care. The Secretary also has the right to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services provided and the facilities of the organization when there is reasonable evidence of some need for inspection.

In up to 25 States, the Secretary is authorized to designate another external agency, known as a quality review organization or QRO to perform reviews. QROs must meet many of the same standards as PROs, but have not contracted with the Department of HHS for the review of services other than those provided by an HMO/CMP.

HMOs/CMPs must have meaningful grievance procedures for the resolution of individual enrollee complaints, about such problems as failure to receive covered services or unpaid bills. In addition, an enrollee who believes that the HMO has improperly denied a service or imposed an excessive charge has the right to a hearing before the Secretary if the amount involved is greater than $100. If the amount is greater than $1,000, either the enrollee or the HMO may seek judicial review.

House bill

a. Disclosure of Information to Enrollees. Each MedicarePlus organization would be required to disclose in clear, accurate, and standardized forms certain information including: (1) benefits, including coverage exclusions and, for a high-deductible/medisave product, a comparison of its benefits with those under other MedicarePlus products; (2) rules relating to prior authorization or other review requirements that could result in nonpayment; (3) liability for cost-sharing for out-of-network services; (4) the number, mix, and distribution of providers; (5) financial obligations of the enrollee; (6) enrollee satisfaction data; (7) enrollee rights and responsibilities; (8) a statement that use of the 911 number is appropriate in emergency situations; and (9) a description of the organization's quality assurance program. (New sec. 1853(a))

b. Access to Services. A MedicarePlus organization offering a MedicarePlus product could restrict the providers from whom benefits were to be provided so long as: (1) the organization made the benefits available to each individual electing the product within the service area with reasonable promptness and in a manner which assured continuity in the provision of benefits, (2) when medically necessary, the organization made benefits available and accessible 24 hours a day and 7 days a week, (3) the product provided for reimbursement to other organizations if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and it was not reasonable given the circumstances to obtain the services through the organization, and (4) coverage was provided for emergency services without regard to prior authorization or the emergency care provider's contractual relationship with the organization.

Emergency services are defined as covered inpatient and outpatient services that are furnished by an appropriate source other than the organization, are needed immediately because of an injury or sudden illness, and are needed because the time required to reach the organization's providers or suppliers would have meant risk of serious damage to the patient's health.

If the MedicarePlus product provided out-of-network coverage (i.e., under a point of service option), the payment level for services furnished outside the network would have to be at least 70 percent (or, if the cost-sharing was 50 percent, at least 40 percent) of the lesser of the payment basis (determined without regard to deductibles and cost-sharing) that would have applied under Medicare Parts A and B, or the amount charged by the entity furnishing such items and services.

In the event that emergency services were furnished by a participating physician or provider of services to an individual enrolled in a MedicarePlus organization, the applicable participation agreement would be deemed to provide that the physician or provider of services would accept as payment in full from the organization the amount that would be payable if the individual were not enrolled with a MedicarePlus organization. In the event that emergency services were furnished by a nonparticipating physician, the limitations on actual charges otherwise applicable under Medicare Part B would apply in the same manner as they do to services furnished to individuals not enrolled in a MedicarePlus organization. (New sec. 1853(b))

c. Timely Authorization for Promptly Needed Care Identified as a Result of Required Screening Evaluation. No provision.

d. Confidentiality and Accuracy of Enrollee Records. Each MedicarePlus organization would have to establish procedures to safeguard the privacy of individually identifiable enrollee information, and maintain accurate and timely medical records. (New sec. 1853(d))

e. Quality Assurance and Accreditation Program. Each MedicarePlus organization would be required to arrange (in accordance with regulations of the Secretary) for an ongoing quality assurance program meeting certain requirements such as: (1) stressing health outcomes; (2) providing the establishment of written protocols for utilization review, (3) providing review by physicians and other health care professionals of the process followed in the provision of services; (4) monitoring and evaluating high volume and high risk services and the care of acute and chronic conditions; (5) evaluating the continuity and coordination of care; (6) establishing mechanisms to detect underutilization and overutilization; (7) making information available on quality and outcomes to facilitate beneficiary comparison and choice; (8) evaluating on an ongoing basis the plan's effectiveness; and (9) providing for external accreditation or review, by a Peer Review Organization or other qualified independent review organization, that the quality of services meets professionally recognized standards of health care (including providing adequate access of enrollees to services). In addition, MedicarePlus fee-for-service plans would be exempt from the requirement that the organization have arrangements for an ongoing quality assurance program and that it maintain accurate and timely medical records for enrollees.

The Secretary would be required to provide that a MedicarePlus organization would be deemed to have met these requirements if it was accredited by a private organization under a process that the Secretary determined assured that the organization met standards that were no less stringent than those required by the bill. (New sec. 1853(d))

f. Coverage Determinations. Each MedicarePlus organization would have to make determinations regarding authorization requests for nonemergency care on a timely basis. Medical necessity decisions could only be made by a physician. Appeals of a determination would have to be decided within 30 days of receiving medical information and no later than 60 days after the date of the decision. Appeals relating to a life-threatening or emergency situation would have to be decided on an expedited basis. (New sec. 1853(e))

g. Grievances and Appeals. Each MedicarePlus organization would have to provide for meaningful procedures for hearing and resolving grievances between the organization (and entities and individuals through which it provides services) and enrollees. An enrollee dissatisfied by reason of the enrollee's failure to receive health services would be entitled, if the amount in controversy was $100 or more, to a hearing before the Secretary. If the amount in controversy was $1,000 or more, the individual or organization, upon notifying the other party, would be entitled to judicial review. The Secretary would be required to contract with an independent, outside entity to review and resolve appeals of denials of coverage related to urgent or emergency services with respect to

MedicarePlus products. The Secretary would be required to consult with the Secretary of Labor to ensure that these requirements, as they apply to grievances to which section 503 of ERISA applies, are applied in a manner consistent with the requirements of ERISA. (New sec. 1853(f))

h. Information on Advance Directives. Each MedicarePlus organization would be required to maintain written policies and procedures respecting advance directives (as specified elsewhere in the Medicare statute). (New sec. 1853(g))

i. Approval of Marketing Materials. Each MedicarePlus organization could not distribute marketing material unless (1) at least 45 days before distribution, the organization submitted the material to the Secretary for review, and the Secretary did not disapprove the material. Standards established below would include guidelines for the review of such materials. Under these guidelines, the Secretary would be required to disapprove marketing material if it was materially inaccurate or misleading or otherwise made a material misrepresentation. To facilitate ''one stop shopping,'' materials submitted to the Secretary by an organization for a MedicarePlus product in an area that were not disapproved would be considered as such for all other areas covered by the product and organization. Each MedicarePlus organization would be required to conform to fair marketing standards included in the MedicarePlus standards. Such standards would include a prohibition against a plan (or agent of such a plan) completing any portion of any election form on behalf of any individual. (New sec. 1853(h))

j. Supplemental Coverage if Plan Terminates the Contract. No provision.

Senate bill

a. Disclosure of Information to Enrollees. No provision for plan disclosure to enrollees. Secretary would disclose information to enrollees. Each Medicare Choice plan sponsor would be required to provide such information as the Secretary requested regarding the plan in order for the Secretary to provide specific information to enrollees. (New sec. 1895C(e)(3))

b. Access to Services. Each Medicare Choice plan sponsor would be required to: (1) make the basic services (and other services for which the sponsor contracted) available and accessible to each individual, within the Medicare service area of the plan with reasonable promptness, and in a manner which assured continuity; (2) provide for reimbursement with respect to such services provided to the enrollee other than through the plan's providers if: (A) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition, and (B) it was not reasonable given the circumstances to obtain the services through the plan's providers. (3) Provide access to appropriate providers, including credentialed specialists, for all medically necessary treatment and services; and (4) except as provided by the Secretary on a case-by-case basis, in the case of a coordinated care plan, provide primary care services within 30 minutes or 30 miles from an enrollee's place of residence if the enrollee resides in a rural area. Each Medicare Choice plan sponsor would be required to provide the Secretary with a demonstration of the plan's capacity to adequately service the plan's expected Medicare enrollment. (New sec. 1895J(d))

c. Timely Authorization for Promptly Needed Care Identified as a Result of Required Screening Evaluation. A Medicare Choice plan sponsor would be required to provide access 24 hours a day, 7 days a week to such persons as might be authorized to make any prior authorizations required by the plan sponsor for coverage of items and services (other than emergency services) that a treating physician or other emergency department personnel identified pursuant to a screening examination required under section 1867(a) of the Social Security Act (relating to examination and treatment in a medical emergency) as being needed promptly by an enrollee. A plan sponsor would be deemed to have approved a request for such services if the physician or other emergency department personnel involved: (1) made a reasonable effort to contact the person for authorization to provide an appropriate referral or to provide the services; or (2) requested such authorization from the person and the person had not denied the authorization within 30 minutes after the request was made. Approval of a request for a prior authorization determination would be treated as approval of a request for any items and services that were requested to treat the medical condition identified as a result of the required screening examination. "Emergency services" and "emergency medical condition" are specifically defined (New sec. 1895J(h))

d. Confidentiality and Accuracy of Enrollee Records. No provision.

e. Quality Assurance and Accreditation Program. Each Medicare Choice plan sponsor would be required to meet certain health plan standards, including those relating to quality assurance and accreditation.

Each sponsor would be required to establish an ongoing internal quality assurance program (in accordance with regulations established by the Secretary for health care services it provides to Medicare enrollees). This program would be required to (1) emphasize health outcomes; (2) provide for establishment of written protocols for utilization review; (3) provide review by physicians and other health care professionals of the process followed in the provision of services; (4) monitor and evaluate high volume and high risk services and the care of acute and chronic conditions; (5) evaluate the continuity and coordination of care; (6) establish mechanisms to detect underutilization and overutilization; (7) after identifying areas for improvement, establish or alter practice parameters; (8) take action to improve quality and assess the effectiveness of such action through systematic follow-up; (9) make information available on quality and outcomes to facilitate beneficiary comparison and choice; and (10) evaluate on an ongoing basis the plan's effectiveness.

Each sponsor also would be required to have an agreement with an independent quality review and improvement organization approved by the Secretary. Such an organization would be required to: (1) provide an alternative mechanism for addressing enrollee grievances; (2) review plan performance based on accepted quality performance criteria; (3) promote and make plans accountable for improved plan performance; (4) integrate into ongoing external quality assurance activities a new set of quality indicators and standards developed specifically for the Medicare population that would be used to determine whether a plan was providing quality care and appropriate continuity and coordination of care; and (5) report to the Secretary on those plans that demonstrated unwillingness or inability to improve their performance.

Each sponsor would be required to meet accreditation standards established by the Secretary or to be accredited by an external independent accrediting organization, recognized by the Secretary as requiring standards at least as stringent as those set by the Secretary.

The Secretary would be required to create incentives for sponsors to report aggregate encounter data, including data on physician visits, nursing home days, home health days, hospital inpatient days and rehabilitation services. (New sec. 1895J(a);1895J(b))

f. Coverage Determinations. The Secretary would be required to provide an expedited review procedure (under the requirements for the sponsor to provide a hearing for grievances) where a failure to receive any health care service or payment for such service would result in significant harm. (New sec. 1895J(e)(2)(C))

g. Grievances and Appeals. Each Medicare Choice plan sponsor would have to provide for meaningful procedures for hearing and resolving grievances between the organization (and entities and individuals through which it provides services) and enrollees. An enrollee dissatisfied by reason of the enrollee's failure to receive health services would be entitled, if the amount in controversy was $100 or more, to a hearing before the Secretary. If the amount in controversy was $1,000 or more, the individual or organization, upon notifying the other party, would be entitled to judicial review. The Secretary would be required to contract with an independent, outside entity to review and resolve appeals of denials of coverage related to urgent or emergency services with respect to Medicare Choice plans (see new sec. 1895J(b)(2)(B)); 1895J(e)).

h. Information on Advance Directives. A contract with Medicare would have to provide that a Medicare Choice plan maintain written policies and procedures respecting advance directives (as specified elsewhere in the Medicare statute). (new sec. 1895J(g))

i. Approval of Marketing Materials. In addition to informational materials required to be distributed by the Secretary, a Medicare Choice Plan sponsor could develop and distribute marketing materials and engage in marketing strategies in accordance with the following: Any marketing material developed or distributed by a Medicare Choice plan sponsor and any marketing strategy developed by such a sponsor: (1) would be required to accurately describe differences between health care coverage available under the plan and the coverage available under traditional Medicare; (2) would have to be pursued in a manner not intended to violate the nondiscrimination requirements; and (3) could not contain false or materially misleading information, and would have to conform to any other fair marketing and advertising standards and requirements applicable to such plans under law. A sponsor would not be allowed to distribute marketing material unless at least 45 days before distribution, the plan submitted the material to the Secretary for review, and the Secretary did not disapprove the material. The Secretary would be required to review all marketing materials under guidelines established by the Secretary. Under these guidelines, the Secretary would be required to disapprove marketing material if it was materially inaccurate or misleading or otherwise made a material misrepresentation. Materials submitted to the Secretary or a regional office of the Department of Health and Human Services that were not disapproved with respect to one area would be considered as such for all other areas covered by the plan. (New sec. 1895G(c))

j. Supplemental Coverage if Plan Terminates the Contract. Each Medicare Choice plan sponsor that provided coverage pursuant to a contract with Medicare would be required to provide assurances to the Secretary that in the event that the contract was terminated, the sponsor could provide or arrange for supplemental coverage of benefits under this title related to a preexisting condition with respect to any exclusion period, to all individuals enrolled with the entity who received Medicare benefits, for the lesser of 6 months or the duration of such period. (Sec. 1895(J)(e)(3))

Conference agreement

The conference agreement follows the House provision with modifications. (See also previous section.)

With respect to access to services, the conference agreement does not include the House provision specifying minimum payment levels where providing out-of-network services pursuant to a point-of-service coverage. It does require that the organization provide access to appropriate providers, including credentialed specialists, for all medically necessary treatment and services, and that coverage be provided for emergency services without regard to prior authorization or the emergency care provider's contractual relationship with the organization.

The conference agreement clarifies that "certain fee-for-service" plans means "unrestricted fee-for-service plans." The latter is defined as a MedicarePlus FFS plan that provides for coverage of benefits without restrictions relating to utilization and without regard to whether the provider has a contract or other arrangement with the organization offering the plan for the provision of such benefits.

With respect to the required quality assurance and accreditation program, the conference agreement modifies the provision relating to external review for quality assurance. Each MedicarePlus organization, for each plan it operated, would have to have an agreement with an independent quality review and improvement organization approved by the Secretary.

With respect to grievances and appeals, the conference agreement modifies the requirement that the Secretary of HHS coordinate with the Secretary of Labor with respect to making the grievance process consistent with the requirements of section 503 of ERISA to ensure that the requirements provide for at least as much protection for beneficiaries as would have applied in its absence.

It is the intent of conferees that in the provision of information regarding advance directives that no health care provider or employee of a health care provider be required under this section to inform or counsel a patient regarding services which purposely cause the death of a person such as assisted suicide, euthansia, or mercy killing.

5. PROVIDER-SPONSORED ORGANIZATIONS (PSOS) (NEW SEC. 1854 OF HOUSE BILL)

Current law

PSOs do not qualify as eligible organizations for Medicare managed care contracts.

House bill

a. Provider-Sponsored Organization (PSO) Defined. A PSO means a public or private entity that (in accordance with standards established under this bill) is a provider or group of affiliated providers that provides a substantial portion of health care under the contract directly through the provider or affiliated group of providers. In defining substantial proportion, the Secretary would be required to consider the need for such an organization to assume responsibility for a substantial portion of services in order to assure financial stability and other factors. Affiliation is specifically defined. (New sec. 1854(a))

b. Process for Establishing Standards. These requirements are specified in other sections of the bill. (New sec. 1854(b))

c. Process for State Certification of PSOs. These requirements are specified in other sections of the bill. (New sec. 1854(c))

d. Preemption of State Insurance Licensing Requirements. In general, State law would be preempted which required that a PSO meet requirements for insurers of health services or HMOs doing business in the State with respect to initial capitalization and establishment of financial reserves against insolvency or imposed requirements that would have the effect of prohibiting the PSO from complying with the applicable requirements of the bill. The general preemption of State law would not apply with respect to State laws that met the bill's requirements for the Secretary to approve State PSO certification. Nothing in this provision would affect the operation of the Federal preemption of State law under section 514 of ERISA. (New sec. 1854(d))

Senate bill

No provision. (See new sec. 1895R on Temporary Federal Certification Process for Coordinated Care Plans.)

Conference agreement

The conference agreement follows the House bill with modifications. (See also discussion of conference agreement for Licensing and Financial Requirements.)

The conference agreement defines a provider-sponsored organization (PSO) as a public or private entity

(1) that is established or organized by a health care provider, or group of affiliated health care providers,

(2) that provides a substantial proportion (as defined by the Secretary) of health care under the contract directly through the provider or affiliated group of providers, and

(3) with respect to which those affiliated providers that share, directly or indirectly, substantial financial risk with respect to the provision of coverage have at least a majority financial interest in the entity.

The conference agreement provides a definition for "health care provider" and requires that the Secretary issue regulations to carry out this section.

(See also provisions relating to antitrust under Subtitle A. Part 3 of Conference Report.)

6. PAYMENTS TO MEDICAREPLUS ORGANIZATIONS (NEW SEC. 1855 OF HOUSE BILL; NEW SEC. 1895H, 1895M, 1895N AND SEC. 7003 OF SENATE BILL)

Current law

Under a Medicare risk contract, an HMO agrees to provide or arrange the full scope of covered Medicare services in return for a single monthly capitation payment issued by Medicare for each enrolled beneficiary. One of the numbers used to determine this payment is the adjusted average per capita cost, or AAPCC. The other, the adjusted community rate or ACR, is discussed above.

The AAPCC is Medicare's estimate of the average per capita amount it would spend for a given beneficiary (classified by certain demographic characteristics and county of residence) who was not enrolled in an HMO and who obtained services on the usual fee-for-service basis. Separate AAPCCs are established for enrollees on the basis of age, sex, whether they are in a nursing home or other institution, and whether they are also eligible for Medicaid, and the county of their residence. These AAPCC values are calculated in four basic steps:

Medicare national average calendar year per capita costs are projected for the future year under consideration. These numbers are known as the U.S. per capita costs (USPCCs) and are estimated average incurred benefit costs per Medicare enrollee and adjusted to include program administration costs. USPCCs are developed separately for Parts A and B of Medicare, and for costs incurred by the aged, disabled, and those with ESRD in those two parts of the program.

Geographic adjustment factors that reflect the historical relationships between the county's and the Nation's per capita costs are used to convert the national average per capita costs to the county level.

Expected Medicare per capita costs for the county are adjusted to a fee-for-service basis by removing both reimbursement and enrollment attributable to Medicare beneficiaries in prepaid plans.

The recalculated county per capita cost is converted into rates that vary according to the demographic variables enumerated above: age, sex, institutional status, Medicaid status.

For each Medicare beneficiary enrolled under a risk contract, Medicare will pay the HMO 95 percent of the rate corresponding to the demographic class to which the beneficiary is assigned.

House bill

a. In General. A MedicarePlus organization under a contract with the Secretary would be paid, with respect to coverage of an individual in a payment area for a month, an amount equal to the monthly adjusted MedicarePlus capitation rate with respect to that individual for that area. Each year, the Secretary would be required to determine and announce no later than September 7 the annual MedicarePlus capitation rate for each payment area for the year, and the factors to be used in adjusting monthly payment rates. (New sec. 1855(a))

b. Notice of Methodological Changes. An explanation of the assumptions and changes in methodology would have to be included in sufficient detail so that organizations could compute monthly adjusted MedicarePlus capitation rates. The Secretary would be required to provide advance notice (at least 45 days prior to the announcement)of the proposed changes in the methodology and assumptions used to develop the rates, and give organizations an opportunity to comment. (New sec. 1855(a))

c. Calculation of Standardized Medicare Capitation Payment Amounts.

Monthly Adjusted MedicarePlus Capitation Rate. Each month, the MedicarePlus organization would be paid for an individual in a payment area, and in a class (as described below), $\frac{1}{12}$ of that year's annual MedicarePlus capitation rate. This amount would be adjusted to reflect the relative actuarial value of Medicare benefits with respect to individuals in a class compared to the national average for individuals in all classes. A payment area is a county (or equivalent area specified by the Secretary) except for the ESRD population, in which case the area is the State.

For purposes of calculating rates, the Medicare population would be divided into three separate groups: the aged, the disabled, and those who have been determined to have end stage renal disease (ESRD). The Secretary would be required to define appropriate classes of enrollees, based on age, gender, welfare status, institutionalization, and such other factors as the Secretary determined to be appropriate so as to ensure actuarial equivalence. The Secretary could add, modify, or substitute for such classes to improve determination of actuarial equivalence. The Secretary would be required to conduct the research needed to provide for greater accuracy in the adjustment of capitation rates. This could include research into the addition or modification of classes. The Secretary would have to report to Congress on this research by January 1, 1997. (New sec. 1855(b))

Per Capita Growth Rates. In general, payment rates for each area would be calculated so as to improve contribution levels in rural and low service utilization markets. Payments to health plans from 1996 onward would be "decoupled" from local fee-for-service expenditures and paid instead on a budgeted system. Rates would be established so that over time, payments to areas with higher-than-average utilization of services would be increased more slowly than payments to areas with lower-than-average utilization. In addition, payments would be calculated so as to ensure that legitimate costs of doing business in different areas (based on certain input prices) would be recognized in the contribution levels.

To establish the payment rates for 1996, areas would be classified according to their average per capita utilization of services (see below). Those areas experiencing the lowest utilization in services would be assigned a per capita growth rate of 9.0 percent, the next lower, 8.0 percent, the median, 5.1 percent, the next higher, 4.7 percent, and those with the highest utilization, being assigned a per capita growth rate of 4.0 percent. To assure that total capitation payments during 1996 were the same as the amount they would have been if the per capita growth rate for all such areas for 1996 were equal to the national average per capita growth rate, the Secretary would adjust the per capita growth rates as follows:

(1) The Secretary would first provide for the additional percent increase needed to assure that the annual MedicarePlus capitation rate for each payment area was at least 12 times $300 for 1996.

(2) For payment areas assigned to the lowest cohort, the Secretary would then provide for the additional percent increase needed to assure that the total capitation payments during 1996 were the same as they would have been if the per capita growth rate for all such areas for 1996 were equal to the national average per capita growth rate. The increase could be applied to a payment area falling into the lowest utilization cohort and would be applied after the increase in the first step was applied.

To establish the payment rates for years after 1996, the Secretary would be required to compute a per capita growth rate for each year for each of the five service utilization cohorts. This computation of payments for each cohort is pegged to the national average per capita growth rate which is as follows: 1996 = 5.3%; 1997 = 3.8%; 1998 = 4.6%; 1999 = 4.3%; 2000 = 3.8%; 2001 = 5.5%; 2002 = 5.6%; Subsequent years = 5.0%.

The median service utilization cohort would receive the national average per capita growth rate for the year. Those areas assigned to the lowest service utilization cohort would get 187.5 percent of the national average growth rate, and those in the highest would get 75 percent. The Secretary would calculate intermediate growth rates for the second and fourth cohorts at an amount that would assure budget neutrality relative to the national average per capita growth rates. Specifically, the growth rates for each cohort are as follows:

lowest=187.5% of the national average per capita growth rate (NAGR);

lower=150% of the NAGR or lower if needed to meet budget neutrality;

median=the average NAGR;

higher=gets a rate calculated to achieve budget neutrality, but not less than 75% of the NAGR;

highest=75% of the NAGR.

After computing per capita growth rates for a year, the Secretary would be required to make a final adjustment of the growth rates. The Secretary would: (1) reduce the per capita growth rate for areas assigned to the median service utilization cohort by the ratio of .1 to 5.3; (2) if the year is 1997, increase the per capital growth rates for payment areas to the extent needed to assure that the annual MedicarePlus capitation rate for each payment area for that year was at least 12 times $320; and (3) adjust the per capita growth rate for areas assigned to the lowest service utilization cohort by such proportion that would result in no net increase in outlays for the year. (New sec. 1855(c))

Assignment of Payment Areas to Service Utilization Cohorts. Each year the Secretary would assign each payment area to a utilization cohort based on a service utilization index value: lowest—less than .80; lower—.80–.89; median—.90-1.09; higher—1.10-1.19; highest—1.20 or more.

The service utilization index value would be equal to the annual MedicarePlus capitation rate for each payment area divided by the input-price adjusted national capitation rate for that area for the year. (The utilization index for one year would be used to set cohorts for the update for the next year). The input-price adjusted capitation rate would be calculated by multiplying the weighted average capitation rate by an input price index (separate indices would be applied for different types of services). For 1996, the Secretary would apply an input price adjustment specified in the legislation; for 1997, the Secretary could continue to use the special rules for 1996. The Secretary would develop refined input price adjustments to be used in later years. (New sec. 1855(d))

d. Payment Process. The Secretary would be required to make monthly payments in advance to the plan for each individual enrolled with a MedicarePlus organization. The payment would be retroactively adjusted to take into account any differences between the actual number of individuals enrolled with an organization and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment. (New sec. 1855(e))

e. Special Rules for Individuals Electing High-Deductible/Medisave Products. In the case of an individual who elected a high-deductible/medisave product, the payment to the MedicarePlus organization could not exceed the premium for the high-deductible product and the difference between the amount that would have otherwise been paid. Anything in addition to that amount would be paid directly into the individual's medisave account on a monthly basis. (New sec. 1855(f))

f. Payments from Trust Funds. Payments to the MedicarePlus organizations would be made from the HI and SMI trust funds in such proportion as the Secretary determined reflected the relative weights that benefits under Parts A and B represented of Medicare's actuarial value of the total benefits. (New sec. 1855(g))

g. Special Rule for Certain Inpatient Hospital Stays. In the case of an individual receiving inpatient hospital services from a hospital covered under Medicare's prospective payment system as of the effective date of the (1) individual's election of a MedicarePlus product: (a) payment for such services until the date of the individual's discharge would be made as if the individual did not elect coverage under the MedicarePlus organization; (b) the elected organization would not be financially responsible for payment for such services until the date of the individual's discharge; and (c) the organization would nevertheless be paid the full amount otherwise payable to the organization; or (2) termination of enrollment with a MedicarePlus organization: (a) the organization would be financially responsible for payment for such services after the date of termination and until the date of discharge; (b) payment for such services during the stay would not be made under Medicare's PPS system; and (c) the terminated organization would not receive any payment with respect to the individual during the period in which the individual was not enrolled. (New sec. 1855(h))

h. Demonstration Project on Market-Based Reimbursement and Competitive Pricing. No provision.

i. Special Rule for Calculation of Payment Rates for 1996. See above under "per capita growth rates," in which the calculation of 1996 growth rates is described. (sec. 1855(c) and 1885(d))

Senate bill

a. In General. Beginning with 1996 and no later than July 31 of each calendar year, the Secretary would be required to determine a standardized Medicare payment amount (according to the provisions of this section) for the following calendar year for each Medicare payment area. (A Medicare payment area is defined as a metropolitan statistical area (whether or not such an area is in a single State) or, in the case of a consolidated metropolitan statistical area, each primary metropolitan statistical area within the consolidated area; and one area within each State composed of all areas that do not fall within a metropolitan statistical area.) The secretary would be required to announce these amounts in a manner intended to provide notice to interested parties. (New sec. 1895M(a), 1895A(c))

b. Notice of Methodological Changes. At least 45 days before making the announcement of annual rates (beginning with the announcement for 1998), the Secretary would be required to provide for notice to Medicare Choice plans of proposed changes to be made in the methodology or benefit coverage assumptions from those made in the previous announcement and would have to provide plans an opportunity to comment on proposed changes. In each announcement, the Secretary would be required to include an explanation of the assumptions (including any benefit coverage assumptions) and changes in methodology used in the announcement in sufficient detail so that plans could compute Medicare payment rates for classes of individuals located in each Medicare payment area which were in whole or in part within the Medicare service area of the plan. (New sec. 1895M(e))

c. Calculation of Standardized Medicare Capitation Payment Amounts.

Calendar Year 1997. For calendar year 1997, the standardized Medicare payment amount for a Medicare payment area would be equal to the sum of:

> 50% of the modified per capita rate for calendar year 1996 and
>
> 50% of the adjusted average national per capita rate for calendar year 1996, increased by the percentage increase in the gross domestic product per capita for the 12-month period ending on June 30, 1996.

The *modified per capita rate* for calendar year 1996 for a Medicare payment area would be equal to the per capita rate which would have been determined (without regard to class) to derive the AAPCCs for 1995 if the applicable geographic area were the Medicare payment area, and 50% of any payments attributable to indirect medical education, direct graduate medical education, and disproportionate share hospital payments were not taken into account, increased by the percentage increase which the Secretary estimated would occur in Medicare expenditures per capita for 1996 over those for 1995.

The adjusted average national per capita rate for a Medicare payment area for calendar year 1996 would be equal to the sum, for all types of Medicare services, of the product for each type of:

the average national per capita rate for 1996;

the proportion of such rate for the year which is attributable to the type of services; and

an index that reflects for 1996 and the type of service the relative input price of such services in the Medicare payment area as compared to the national average input price for the service. (In applying this, the Secretary would use those indices that are used in applying (or updating) medical payment areas for specific areas and localities.)

The average national per capita rate for 1996 would be the weighted average of the modified per capita rates described above for all Medicare payment areas for 1996.

For succeeding years, the standardized Medicare payment for any calendar year after 1997 in a Medicare payment area would be an amount equal to the standardized Medicare payment amount determined for each area for the preceding year, increased by the percentage increase in the per capita GDP for the 12-month period ending in June 30 of the preceding calendar year.

However, for 1998, the standardized Medicare payment amount for the preceding calendar year would be the amount which would have been determined if 100% of the adjusted average national per capita rate for calendar year 1996 had been applied instead of 50%.

A special rule would apply with respect to individuals with ESRD. In computing the standardized Medicare payment amount for any Medicare payment area, individuals with ESRD or medical expenditures on them would not be taken into account. (New sec. 1895M(b))

Adjustments for Payments to Plan Sponsors. Payment rates to a Medicare Choice plan sponsor would be equal to the standardized Medicare payment amount for the Medicare payment area, adjusted for such risk factors as age, disability status, gender, institutional status, health status, and such other factors as the Secretary determined to be appropriate to ensure actuarial equivalency. The Secretary could add to, modify, or substitute for such classes if such changes would improve the determination of actuarial equivalence. The Secretary would be required to establish a separate rate of payment with respect to ESRD enrollees. This rate would have to be actuarially equivalent to rates paid for other enrollees in the Medicare payment area (or such other area as specified by the Secretary). (New sec 1895M(c))

Geographical Adjustments. Unless Congress provides otherwise and starting with calendar years after 1999, the Secretary would be required to make annual differential adjustments to the standardized Medicare payment amounts for calendar years 2000 and 2001 so as to achieve appropriate and equitable variation across payment areas by calendar year 2002. This variation would be required to be reasonably related to measurable geographic differences in Medicare payment areas. The Secretary would be required to adjust the standardized Medicare payment amounts in a manner that assured that total payments for a year were not greater or less than they would have been in the absence of the geographical adjustment (i.e., budget neutrality). The geographic adjustment process would be informed by an analysis that the Secretary would be required to conduct in consultation with interested parties. Such analysis would focus on the measurable input cost differences across payment areas, including wage differentials, and other measurable variables identified by the Secretary. The Secretary would also be required to determine the degree to which Medicare beneficiaries, including those in rural and underserved areas, have access to more health choices by the year 2000 under this Act, and the extent to which standardized payment amounts limited or enhanced such choices. The Secretary would be required to submit a report to the appropriate committees of Congress that included the results of the analysis and the differential adjustments that the Secretary intended to implement for calendar years 2000 and 2001. (New sec. 1895M(d))

d. Payment Process. The Secretary would be required to make monthly payments in advance to the Medicare Choice plan sponsor for each Medicare individual is enrolled consistent with the payment rates described below. The payment would be retroactively adjusted to take into account any differences between the actual number of individuals enrolled in the plan and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment. (New sec. 1895O(a))

e. Special Rules for Individuals High-deductible/Medisave Products. No provision.

f. Payments from Trust Funds. Payments to Medicare Choice plan sponsors would be made from the HI and SMI trust funds in such proportion as the Secretary determined reflected the relative weights that benefits under Parts A and B represented of the actuarial value of the total benefits. (New sec. 1895O(b))

g. Special Rule for Certain Inpatient Hospital Stays. A contract under the Medicare Choice program would provide that in the case of an individual who was receiving inpatient hospital services from a hospital covered under Medicare's prospective payment system as of the effective date of the: (1) individual's enrollment with a Medicare Choice plan: (a) payment for such services until the date of the individual's discharge would be made as if the individual were not enrolled with the plan; (b) the plan sponsor would not be financially responsible for payment for such services until the date of the individual's discharge; and (c) the plan sponsor would nevertheless be paid the full amount otherwise payable to the plan; or (2) termination of enrollment with a Medicare Choice plan: (a) the plan sponsor would be financially responsible for payment for such services after the date of termination and until the date of discharge; (b) payment for such services during the stay would not be made under Medicare's PPS system; and (c) the plan sponsor would not receive any payment with respect to the individual during the period in which the individual was not enrolled. (New sec. 1895H(e))

h. Demonstration Project on Market-Based Reimbursement and Competitive Pricing. The Secretary would be required to establish one or more demonstration projects to determine the standardized Medicare payment amounts through competitive bidding by Medicare Choice plans in a Medicare payment area. By December 31, 2001, the Secretary would be required to submit a report to Congress on the success of such projects in determining standardized Medicare payment amounts that were reflective of market prices. (New sec. 1895M(f))

i. Special Rule for Calculation of Payment Rates for 1996. Notwithstanding any other provision of law, the per capita rate under sec. 1876 of the Social Security Act for 1996 for any class for a geographic area would be equal to the sum of: (1) 75% of the updated per capita rate for a class for an area; and (2) 25% of the weighted average of the updated per capita rates for a class for all geographic areas. The latter would be adjusted in the same manner as prescribed under the above provisions for calculating the adjusted average national per capita rate for 1996 to reflect differences in input prices in the geographic area as compared to the national average input prices. In no event would any average per capita rate in a geographic area determined under the preceding sentence be less than the rate determined under section 1876 of the Social Security Act for 1995. For purposes of calculating the per capita rate, the updated per capita rate for any class would equal the per capita rate of payment for 1995 determined under existing law for a county (or equivalent area), increased by the percentage increase which the Secretary estimated would occur in Medicare expenditures per capita for 1996 over those for 1995. The Secretary would be required to publish the rates no later than 30 days after enactment. (Sec. 7003)

Conference agreement

The conference agreement follows the Senate provision with modifications.

In general, under a MedicarePlus contract, the Secretary would be required to make monthly payments in advance to each MedicarePlus organization, with respect to coverage of an individual in a MedicarePlus payment area for a month, in an amount equal to 1/12 of the annual MedicarePlus capitation rate with respect to that individual for that area. The payment would be adjusted for such risk factors as age, disability status, gender, institutional status, and other such factors as the Secretary determined to be appropriate, so as to ensure actuarial equivalence. The Secretary could add to, modify, or substitute for such factors, if such changes would improve the determination of actuarial equivalence.

Payments to plans would be calculated based on the *annual MedicarePlus capitation rate.* The Secretary would be required to annually determine, and announce (in a manner intended to provide notice to interested parties) no later than August 1 before the calendar year concerned: (1) the annual MedicarePlus capitation rate for each MedicarePlus capitation area for year, and (2) the risk and other factors to be used in adjusting such rates for payments for months in that year.

Calculation of the annual MedicarePlus capitation rate. The conference agreement modifies the Senate methodology for determining the payment to MedicarePlus plans. The annual MedicarePlus capitation rate, for a payment area for a contract for a calendar year would be equal to the greatest of the following:

(A) A blended capitation rate, defined as the sum of: (1) the area-specific percentage (as defined below) of the annual area-specific MedicarePlus capitation rate for the year for the payment area and (2) the national percentage (as defined below) of the input-price adjusted annual national MedicarePlus capitation rate for the year. (This sum is multiplied by a budget neutrality adjustment to ensure no more or less is spent on plan payments than would have otherwise been made under this part.)

(B) A minimum monthly payment amount set at $300 for 1996 and $350 for 1997;

(C) A monthly payment amount representing a minimum 2% increase over the previous year's rate.

The area-specific and national percentages referred to in (A) above are as follows:

1996—the area-specific percentage is 90% and the national percentage is 10%.

1997—the area-specific percentage is 90% and the national percentage is 10%.

1998—the area-specific percentage is 85% and the national percentage is 15%.

1999—the area-specific percentage is 80% and the national percentage is 20%.

2000—the area-specific percentage is 75% and the national percentage is 25%.

After 2000—the area-specific percentage is 70% and the national percentage is 30%.

The annual area-specific MedicarePlus capitation rate for a MedicarePlus payment area would be:

> For 1996—the annual per capita rate of payment for 1995 (as determined under the current law calculation to derive 95% of the AAPCC), increased by the national average per capita growth percentage for 1996 (as defined below), or
>
> For a subsequent year—the annual area-specific MedicarePlus capitation rate for the previous year, increased by the national average per capita growth percentage for such subsequent year.

The conference agreement defines the input-price-adjusted annual national MedicarePlus capitation rate for a MedicarePlus payment area for a year to equal the weighted sum, for all types of Medicare services, of:

> the national standardized annual MedicarePlus capitation rate for the year, defined as the weighted average of all area-specific capitation rates for that year multiplied by—
>
> an index that reflects (for the year and the type of services) the relative input price of such services in the area as compared to the national average input price of such services. (In applying this, the Secretary would use those indices that

are used in applying (or updating) national payment rates for specific areas and localities.)

A special rule would apply in determining the input-price adjusted annual national MedicarePlus capitation rate for 1996, and at the Secretary's discretion, for 1997.

The national average per capita growth percentage would be defined as follows: 1996 = 8.0%; 1997 = 3.8%; 1998 = 4.6%; 1999 = 4.3%; 2000 = 3.8%; 2001 = 5.5%; 2002 = 5.6%; Subsequent years = 5.0%.

A MedicarePlus payment area is defined as a county or equivalent area specified by the Secretary. In the case of individuals who are determined to have ESRD, the MedicarePlus payment area would be each State. The conference agreement would modify the Senate provision for making geographic adjustments. Upon request of a State for a contract year (beginning after 1996) made at least 7 months before the beginning of the year, the Secretary would redefine MedicarePlus payment areas in the State to: (1) a single Statewide MedicarePlus payment area; (2) the metropolitan system described below; or (3) a single MedicarePlus payment area consolidating noncontinuous counties (or equivalent areas) within a State. This adjustment would be effective for payments for months beginning with January of the year following the year in which the request was received. The Secretary would be required to make an adjustment to payment areas in the State to ensure budget neutrality.

The metropolitan system referred to above follows the Senate bill by providing for a payment system based on metropolitan statistical areas (MSAs) in which all portions of each MSA in the State or in the case of a consolidated MSA, all of the portions of each primary MSA within the consolidated areas within the State, are treated as a single MedicarePlus payment area, and all areas in the State that do not fall within a MSA are treated as a single MedicarePlus payment area.

The conference agreement does not include the Senate provisions relating to geographical adjustments, including the provision that the Secretary provide analysis of input cost differences across payment areas and the report to Congress on this analysis.

It is the intent of the conferees that the Secretary conduct an analysis, based on the developments in the MedicarePlus program up to December 31, 1998, of the variation in Medicare payment amounts, taking into consideration measurable input cost differences, and the degree to which MedicarePlus payment amounts have enhanced or limited beneficiary choice of health plans in areas. The Secretary would report the findings to the appropriate committees of the Congress, and the public, not later than December 31, 2000.

In the case of an individual who elected a high-deductible plan, the amount of the monthly payment to the MedicarePlus organization offering the high deductible plan could not exceed the monthly premium for the plan. Any additional amount would be paid directly into the individual's High Deductible MedicarePlus MSA. No payment would be made unless the individual had established a High Deductible MSA before the beginning of the month and if the case of multiple accounts, the individual had designated one for purposes of receiving the contribution. Deposits would be made to the account as a lump sum in the first month. In the case of a termination of election of this option, the Secretary would be required to provide for a procedure for recovery of deposits attributable to the remaining months of the year.

The conference agreement includes an amendment providing that effective January 1, 1997, if a member of a Federally qualified HMO certified that a Rebate MedicarePlus MSA had been established for his or her benefit, the HMO could reduce the basic health services payment otherwise determined under the applicable law by requiring the payment of a deductible.

Rebates would be provided as follows: In general, if the amount of the monthly premium for a MedicarePlus plan (other than a high deducible plan) for a MedicarePlus payment area was less than $\frac{1}{12}$ of the annual MedicarePlus capitation rate for the area and year involved, at the election of an individual enrolled under the plan, the Secretary would either:

(1) In the case of an individual who had a Rebate MedicarePlus MSA account, deposit 100% of such difference into the account specified by the individual,

(2)(a) pay to the MedicarePlus organization on behalf of the individual 100% of the difference (up to the premium amount) for supplemental benefits; or (b) pay to the individual an amount equal to 75% of the remainder of the difference, and deposit any remainder of the difference in the Federal Hospital Insurance Trust Fund.

The conference agreement follows the House provision with respect to payments in the case of an individual receiving inpatient hospital services from a hospital covered under Medicare's prospective payment system as of the effective date of the (1) individual's election of a MedicarePlus product.

7. ESTABLISHMENT OF STANDARDS FOR MEDICAREPLUS ORGANIZATIONS/MEDICARE CHOICE PLANS (NEW SEC. 1856 OF HOUSE BILL; NEW SEC. 1895S OF SENATE BILL)

Current law

Under section 1876 of the Social Security Act, Medicare specifies requirements to be met by an organization seeking to become a managed care contractor with Medicare. There is no provision for NAIC to play a role in developing or establishing these requirements. There is no provision for Provider-Sponsored Organizations.

House bill

a. Federal Standards Applicable to State-Regulated Organizations and Products. The Secretary would be required to request the National Association of Insurance Commissioners (NAIC) to develop and submit within 12 months after enactment proposed standards consistent with the bill requirements for MedicarePlus organizations (other than sponsoring organizations and PSOs) and products. Such proposed standards could relate to qualified associations only with respect to MedicarePlus products offered by them and only if such products were issued by organizations which were organized and licensed under State law.

If the NAIC's submission was timely, the Secretary would review the proposed standards within 90 days and promulgate them with modifications to the extent they did not meet the requirements. If the Association's submission was not timely, the Secretary would be required to promulgate proposed standards no later than otherwise required. Until such standards were established, the Secretary would provide interim standards as might be appropriate. Such interim standards would have to be issued no later than June 1, 1996. (New sec. 1856(a))

b. Standards Applicable to Union and Taft-Hartley Sponsors, and Qualified Associations. The Secretary would also develop and promulgate MedicarePlus standards for sponsoring organizations and products except for products offered by qualified associations organized and licensed under State law to offer health insurance or health benefits coverage. With respect to union and Taft-Hartley sponsors, the Secretary would be required to consult with the Secretary of Labor and the standards would be promulgated about the same time as the general MedicarePlus standards. (New sec. 1856(b))

c. Standards Applicable to Provider-Sponsored Organizations. With respect to provider-sponsored organizations, the Secretary would establish standards on an expedited basis using the negotiated rule-making process under title 5 United States Code.

The target publication date for the rule would be September 1, 1996.

Within 45 days after enactment, the Secretary, after consulting with the National Association of Insurance Commissioners, the American Academy of Actuaries, organizations representing Medicare beneficiaries, and other interested parties, would publish the notice required by section 564(a) of title 5.

The period for submitting comments would be shortened to 15 days, and within 30 days thereafter the Secretary would be required to provide for the appointment of a negotiated rulemaking committee. The Secretary would be required to provide for a facilitator no later than 10 days after the establishment of the committee.

The negotiated rulemaking committee would be required to report to the Secretary no later than June 1, 1996, regarding its progress towards reaching consensus and whether that was likely to occur before one month prior to the target publication date. If the committee reported it had failed to make significant progress towards reaching consensus, or if it was unlikely to reach consensus by the target date, the Secretary could terminate the process and provide for the publication of the rule through other methods. Otherwise, the committee would be required to submit a report containing the proposed rule no later than one month before the target publication date.

The Secretary would publish the rule in the Federal Register by the target publication date. The rule would be effective and final immediately on an interim basis, but subject to revision after public notice and opportunity for comment of not less than 60 days. The Secretary would be required to provide for consideration of such comments and republication of the rule not later than one year after the target publication date.

With the initial publication of the final rule, the Secretary would be required to specify a process for timely review and approval of entities to be certified as provider-sponsored organizations. Completed applications would be acted upon within 60 days of receipt.

After consulting with the negotiated rulemaking committee, the Secretary by March 1, 1996, would be required to circulate a proposed application form. (New sec. 1856(c))

d. Coordination Among Final Standards to Promote Equitable Treatment. In establishing MedicarePlus standards other than on an interim basis, the Secretary would be required to try to be consistent where appropriate in order to promote the equitable treatment of different types of MedicarePlus organizations and the consistent protection for individuals who chose their products. (New sec. 1856(d))

e. Use of Current Standards for Interim Standards. Standards established on an interim basis could be based on currently applicable standards, such as those established for analogous provisions of section 1876 or the private health insurance market. (New sec. 1856(e))

f. Application of New Standards to Entities with Existing Contracts. At the time MedicarePlus standards change, an organization with a contract in effect could elect not to have the changes apply until the end of the contract year (or, if there is less than 6 months remaining in the contract year, until one year after its end). (New sec. 1856(f))

g. Relation to State Laws. Standards under this section would supersede any State law or regulation (to the extent it was inconsistent with the standards) with respect to MedicarePlus products which were offered by MedicarePlus organizations that were organized and licensed under State law to offer health insurance or health benefits coverage. (New sec. 1856(g))

h. Secretary's Proposal for Conforming Amendments. No provision.

Senate bill

a. Federal Standards Applicable to State-Regulated Organizations and Products. The Secretary would be required to establish such regulations as might be necessary to carry out the purposes of the Medicare Choice provisions, including regulations setting forth the requirements to meet all quality, access, and solvency standards specified above.(New Sec. 1895S(a))

b. Standards Applicable to Union and Taft-Hartley Sponsors, and Qualified Associations. No provision.

c. Standards Applicable to Provider-Sponsored Organizations. No provision (but see new sec. 1895R on Temporary Federal Certification Process for Coordinated Care Plans).

d. Coordination Among Final Standards to Promote Equitable Treatment. No provision.

e. Use of Interim Standards. The Secretary could, within 120 days after enactment, promulgate regulations (as described in (a) above) on an interim basis, after notice and opportunity for comment. (New sec. 1895S(b)) *f. Application of New Standards to Entities with Existing Contracts.* No provision (but see sec. 1895R on Temporary Federal Certification Process for Coordinated Care Plans).

g. Relation to State Laws. No provision (but see sec. 1895R on Temporary Federal Certification Process for Coordinated Care Plans).

h. Secretary's Proposal for Conforming Amendments. No later than 90 days after enactment, the Secretary would be required to submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the Medicare Choice provisions. (New sec. 1895S(c))

Conference agreement

The conference agreement combines provisions on establishment of standards for MedicarePlus organizations with provisions for certification of MedicarePlus organizations and plans. The agreement is described below.

8. PROCESS FOR CERTIFICATION OF MEDICAREPLUS ORGANIZATIONS AND PRODUCTS (NEW SEC. 1857 OF HOUSE BILL; NEW SEC. 1895R OF SENATE BILL)

Current law

Eligibility to be a Medicare managed care contractor is determined by the Department of Health and Human Services. States do not play a role in certifying organizations as eligible to become Medicare managed care contractors.

House bill

a. Federal Certification of Plans. Beginning on the date MedicarePlus standards were established, for States for which certification programs were not approved and operating, the Secretary would be required to establish a process for certifying that such organizations (other than unions sponsors, Taft-Hartley sponsors, and PSOs) and their products met the standards. The Secretary would be required to publish and periodically update a list of approved State programs. (New sec. 1857(a)(5))

1. Coordinated care plans. No provision (but see new sec. 1857(a)(5))

2. Other plans. The Secretary would be required to establish a process for certifying that sponsoring organizations and their respective MedicarePlus products met MedicarePlus standards. With respect to union and Taft-Hartley sponsors, the process would be established and operated in cooperation with the Secretary of Labor. To the maximum extent practicable, the Federal process would use private accreditation processes that the Secretary finds apply standards no less stringent than the requirements of this part. The use of private accreditation processes would be valid only for periods specified by the Secretary. The Secretary could impose user fees on organizations seeking certification to finance its cost. (New sec. 1857(b))

3. Provider-Sponsored Organizations. See new sec. 1856(c) as described above in sec. 7(c) of the House provisions.

b. State Certification Process. The Secretary would be required to approve a MedicarePlus certification and enforcement program established by a State for applying MedicarePlus standards to MedicarePlus organizations and products if the Secretary determined that the program effectively provided for the application and enforcement of the MedicarePlus standards. State certification would not apply to union or Taft-Hartley sponsors or, except as follows, provider-sponsored organizations. State certification programs would have to provide for certification of compliance of MedicarePlus organizations and products not less often than once every three years. A State could impose user fees on organizations seeking certification to finance its cost. A MedicarePlus organization or product with State certification would be considered to be certified with respect to offerings of the product to individuals residing in the State. (New sec. 1857(a))

1. Federal approval of State certification. The Secretary would be required to periodically review approved State certification programs to determine if they continued to provide for certification and enforcement. States found to be out of compliance would be allowed an opportunity to adopt a plan of correction. If the failure continued, the Federal certification process would be applied. (New sec. 1857(a))

2. State certification of PSOs. The Secretary would be required to establish a process under which States could propose to certify provider-sponsored organizations, but State proposals would not be approved unless the Secretary determined that they were identical to the standards of this part and would not result in a lower level or quality of enforcement. (New sec. 1857(c))

c. Continued State Regulation of Products Offered by Qualified Association Plans. The certification provisions of this section would not limit the authority of States to regulate products offered by MedicarePlus organizations that are qualified associations and meet specified conditions. (New sec. 1857(e))

d. Notice to Enrollees in Case of Decertification. In the event that a MedicarePlus organization or product was decertified, the plan would have to notify each enrollee. (New sec. 1857(d))

e. Sunset of Temporary Federal Certification Process. No provision.

f. Transition Treatment for Existing Risk Contracts. No provision (but see new sec. 1856(f))

g. Partial Capitation Demonstration. No provision.

h. Report on Temporary Federal Certification. No provision.

Senate bill

a. Federal Certification of Plans. The Secretary would establish a process for certification of a coordinated care plan and its sponsor. The process would (1) set forth standards for certification, (2) provide that final action would be taken within 120 business days of receipt of the completed application, (3) provide that State laws and regulations would apply to the extent they were not found to be unreasonable barriers to market entry, and (4) require any person receiving a certificate to provide the Secretary with all reasonable information to ensure compliance with certification. A certificate issued under these procedures could not be for more than 36 months and could not be renewed. A person receiving the certificate would be required to continue seeking State licensure during the period the certificate is in effect. (New sec. 1895R(b))

1. Coordinated care plans. The Secretary would evaluate applications from coordinated care plan sponsors if a State failed to substantially complete action within 90 days of receipt of a completed application or if a State denied the application and the Secretary determined that the State's licensing standards or review process created an unreasonable barrier to market entry. State standards or review processes would not be treated as unreasonable barriers if they were applied consistently to all coordinated care Medicare Choice plan applications, [and] were not in conflict or inconsistent with Federal standards. (New sec. 1895(a))

2. Other plans. No provision.

3. Provider-Sponsored Organizations. No provision.

b. State Certification Process. No provision (but a person receiving a certificate under this section would be required to continue to seek State licensure during the period the certificate was in effect. (New sec. 1895R(b)(3)(B))

1. Federal approval of State certification. No provision (but see new sec. 1895R(b))

2. State certification of PSOs. No provision.

c. Continued State Regulation of Products Offered by Qualified Association Plans. No provision (but see new sec. 1895R(b))

d. Notice to Enrollees in Case of Decertification. No provision.

e. Sunset of Temporary Federal Certification Process. No certificate would be issued under Federal procedures after December 31, 2000, and no such certificate would remain in effect after December 31, 2001 (New sect. 1895R(b)(3)(C))

f. Transition Treatment for Existing Risk Contracts. A Medicare choice plan sponsor that was an eligible organization (under sec. 1876(b) of current law) and that had a risk-sharing contract in effect as of enactment or had an application for such a contract filed before enactment and the contract was entered into before July 1, 1996 would be treated as meeting the Federal standards in effect under this section for any contract years beginning before January 1, 2000. (New sec. 1895R(e))

g. Partial Capitation Demonstration. The Secretary would be required to conduct a demonstration on alternative partial risk-sharing arrangements with health care providers. The Secretary would be required to report to Congress no later than December 31, 1998, on the administrative feasibility of such partial capitation methods and the information necessary to implement the arrangements. (New sec. 1895R(f))

h. Report on Temporary Federal Certification. The Secretary would be required to report to Congress no later than December 31, 1998, on the temporary Federal certification system. The report would include analysis of State efforts to adopt licensing standards and review processes that take into account the fact that coordinated care plan sponsors provide services directly to enrollees through affiliated providers. (New sec. 1895R(c))

Conference agreement

The conference agreement combines provisions on establishment of standards for MedicarePlus organizations with provisions for certification of MedicarePlus organizations and plans.

The agreement follows the House bill with modifications. The agreement provides that State certification programs (as approved by the Secretary) may apply to provider-sponsored organizations other than with respect to solvency standards. Such organizations would be among those for which the Secretary would ask the National Association of Insurance Commissioners to develop and submit proposed standards (except for solvency). The Secretary would establish solvency standards for provider-sponsored organizations on an expedited basis and using a negotiated rulemaking process as under the House bill. In establishing the latter standards, the Secretary shall consult with interested parties and take into account (1) the delivery system assets of an organization and the ability of the organization to provides services directly to enrollees through affiliated providers and (2) alternative means of protecting against insolvency including reinsurance, unrestricted surplus, letters of credit, guarantees, organizational insurance coverage, partnerships with other licensed entities, and valuation attributable to the ability of such an organization to meet its service obligations through direct delivery of care.

9. CONTRACT AUTHORITY (NEW SEC. 1858 OF HOUSE BILL; NEW SEC. 1895P AND 1895Q OF SENATE BILL)

Current law

Contracts with HMOs are for 1 year, and may be made automatically renewable. However, the contract may be terminated by the Secretary at any time (after reasonable notice and opportunity for a hearing) in the event that the organization fails substantially to carry out the contract, or carries out the contract in a manner inconsistent with the efficient and effective administration of Medicare HMO law, or no longer meets the requirements specified for Medicare HMOs. The Secretary also has authority to impose certain lesser sanctions, including suspension of enrollment or payment and imposition of civil monetary penalties. These sanctions may be applied for denial of medically necessary services, overcharging, enrollment violations, misrepresentation, failure to pay promptly for services, or employment of providers barred from Medicare participation.

To be eligible to be a risk contractor, HMOs/CMPs must have at least 5,000 members; if, however, they primarily serve members outside urbanized areas, they may have fewer enrollees (defined in regulation as at least 1,500). Organizations eligible for Medicare cost contracts may have fewer members than 5,000 (specified in regulation as at least 1,500).

No more than 50 percent of the organization's enrollees may be Medicare or Medicaid beneficiaries. This rule may be waived, however, for an organization that serves a geographic area where Medicare and Medicaid beneficiaries make up more than 50 percent of the population or (for 3 years) for an HMO that is owned and operated by a governmental entity.

During its annual open enrollment period of at least 30 days duration, HMOs must accept beneficiaries in the order in which they apply, up to the limits of its capacity, unless to do so would lead to violation of the 50 percent Medicare-Medicaid maximum or to an enrolled population unrepresentative of the population in the area served by the HMO. If an HMO chooses to limit enrollment because of its capacity, regulation provides that it must notify HCFA at least 90 days before the beginning of its open enrollment period and, at that time, provide HCFA with its reasons for limiting enrollment.

In areas where Medicare has risk contracts with more than one HMO and an HMO's contract is not renewed or is terminated, the other HMOs serving the area must have an open enrollment period of 30 days for persons enrolled under the terminated contract.

House bill

a. In General. The Secretary would not permit the election of a MedicarePlus product and no payment would be made to an organization unless the Secretary had entered into a contract with the organization with respect to the product. A contract could cover more than one MedicarePlus product. Contracts would provide that organizations agree to comply with applicable requirements and standards. (New sec. 1858(a))

b. Minimum Enrollment Requirements. The Secretary would be prohibited from entering into a contract with a MedicarePlus organization other than a union or Taft-Hartley sponsor unless the organization had at least 5,000 individuals (or 1,500 individuals in the case of a PSO) who were receiving health benefits through the organization. An exception would apply if the MedicarePlus standards permitted the organization to have a lesser number of beneficiaries (but not less than 500 for a PSO) if the organization primarily served individuals residing outside of urbanized areas. The Secretary could waive this requirement during an organization's first 3 contract years. Minimum enrollment requirements would not apply to a contract that related only to high-deductible/medisave product. (New sec. 1858(b))

c. Contract Period and Termination. The contract would be for at least one year, could be made automatically renewable in the absence of notice by either party of intention to terminate. The Secretary could terminate any contract at any time or impose intermediate sanctions described below on the organization if the Secretary found that the organization (a) had failed substantially to carry out the contract; (b) was carrying it out in a manner substantially inconsistent with efficient and effective administration; (c) was operating in a manner that was not in the best interests of the individuals covered under the contract; or (d) no longer substantially met MedicarePlus conditions. Contracts would specify their effective date, but those for coverage under a high-deductible/medisave account could not take effect before January 1997. The Secretary would not have to contract with an organization that had voluntarily terminated its contract with Medicare in the previous 5 years. The authority of the Secretary with respect to Medicare Choice plans could be performed without regard to laws or regulations relating to contracts of the United States that the Secretary determined were inconsistent with the purposes of Medicare. (New sec. 1858(c))

d. Protections Against Fraud and Beneficiary Protections. Each contract would provide that the Secretary or his or her designee would have the right to inspect or otherwise evaluate the quality, appropriateness and timeliness of services, as well as the organization's facilities if there were reasonable evidence of need for such inspection; in addition, they would have the right to audit and inspect any books and records that pertain to (1) the ability of the organization to bear risk of financial loss and (2) services performed or determinations of amounts payable under the contract. The contract would also require the organization to provide and pay for written notice in advance of a termination, as well as a description of alternatives for obtaining benefits, to each enrollee. MedicarePlus organizations would be required to report financial information to the Secretary (and to enrollees, if requested), including information demonstrating that the organization was fiscally sound, a copy of the financial report filed with HCFA, and a description of transactions between the organization and parties in interest. The contract would require the organization to notify the Secretary of loans and other special financial arrangements with subcontractors, affiliates, and related parties. (New sec. 1858(d))

e. Additional Contract Terms. Contracts would contain other terms and conditions (including requirements for information) as the Secretary found necessary and appropriate. (New sec. 1858(e))

f. Intermediate Sanctions. The Secretary would be authorized to carry out specific remedies in the event that a MedicarePlus organization: (1) failed substantially to provide medically necessary items and services required to be provided, if the failure adversely affected (or had the substantial likelihood of adversely affecting) the individual; (2) imposed premiums on individuals that were in excess of the premiums permitted; (3) expelled or refused to re-enroll an individual; (4) engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrolling by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services; (5) misrepresented or falsified information; (6) failed to comply with other specified requirements; or (7) employed or contracted with any individual or entity that was excluded from Medicare or Medicaid participation for the provision of health care, utilization review, medical social work, or administrative services, or employed or contracted with any entity for the provision through such an excluded individual or entity.

The remedies would include civil money penalties of not more than $25,000 for each determination of a failure described above or with respect to certain failures (such as denying enrollment to persons with a preexisting medical condition or misrepresenting information furnished to the Secretary), of not more than $100,000. In cases of the latter, the Secretary could also levy a $15,000 fine for each individual not enrolled. In the case of an organization determined to have charged excess premiums, the Secretary could also recover twice the excess amount and return the excess amount to the affected individual. In addition, the Secretary could suspend enrollment of individuals and payment to the organization after notifying it of an adverse determination, until the Secretary was satisfied that the failure had been corrected or would not recur. The provisions of section 1128A (other than subsections (a) and (b)) would apply to the determinations of failures and the remedies described above.

Under his or her authority to terminate contracts, if the Secretary determined that a failure had occurred other than those described above, other intermediate sanctions could be imposed. These include: (1) civil money penalties up to $25,000 if the deficiency directly adversely affected (or had the likelihood of adversely affecting) an individual under the organization's contract; (2) penalties of not more $10,000 for each week after the Secretary initiated procedures for imposing sanctions; and (3) suspension of enrollment until the deficiency had been corrected and the Secretary determined it was unlikely to recur. (New sec. 1858(f))

g. Procedures for Imposing Sanctions. The Secretary could terminate a contract or impose the sanctions described above in accordance with formal investigation and compliance procedures under which (A) the Secretary provides the organization with an opportunity to develop and implement a corrective action plan, (B) the Secretary imposes more severe sanctions on organizations that have a history of deficiencies or have not taken steps to correct those the Secretary brought to their attention, (C) there are no unreasonable or unnecessary delays between finding a deficiency and imposing sanctions, and (D) the Secretary provides reasonable notice and opportunity for a hearing, including the right to appeal an initial decision. (New sec. 1858(g))

Senate bill

a. In General. The Secretary would enter into a contract with any Medicare Choice plan sponsor in a Medicare payment area if requirements pertaining to the plan and sponsor are met. (New sec. 1895P)

b. Minimum Enrollment Requirements. No provision.

c. Contract Period and Termination. Except for termination for cause, each contract may be made automatically renewable in the absence of notice by either party of intention to terminate. The Secretary may terminate a contract with a Medicare Choice plan sponsor at any time or may impose the intermediate sanctions described below if the Secretary finds that the sponsor (1) has failed substantially to carry out the contract, (2) is carrying it out in a manner substantially inconsistent with efficient and effective administration, or (3) no longer substantially meets Medicare Choice conditions. The Secretary would not have to have a contract with a sponsor that had voluntarily terminated its contract with Medicare in the previous 5 years. The authority the Secretary with respect to Medicare Choice plans may be performed without regard to laws or regulations relating to contracts of the United States that the Secretary determines are inconsistent with the purposes of Medicare. (New sec. 1895Q(b), 1895Q(d), and 1895Q(e))

d. Protections Against Fraud and Beneficiary Protections. Each contract would provide that the Secretary or his or her designee would have the right to inspect or otherwise evaluate the quality, appropriateness and timeliness of services, as well as the sponsor's facilities if there were reasonable evidence of need for such inspection; in addition, they would have the right to audit and inspect any books and records that pertain to the ability of the sponsor to bear risk of financial loss. The contract would also require the sponsor to provide and pay for written notice in advance of a termination, as well as a description of alternatives for obtaining benefits, to each enrollee. In addition, except as provided by the Secretary, the contract would require the sponsor to comply with Public Health Service Act provisions relating to financial information disclosures and liability arrangements, [and to provide information described in sec. 1866(b)(2)(C)(ii)]. The contract would require the sponsor to notify the Secretary of loans and other special financial arrangements with subcontractors, affiliates, and related parties. (New sec. 1895Q(c))

e. Additional Contract Terms. Contracts would contain other terms and conditions (including requirements for information) as the Secretary finds necessary and appropriate. (New sec. 1895Q(c))

f. Intermediate Sanctions. The Secretary would be authorized to carry out specific remedies in the event that a Medicare Choice plan sponsor: (1) failed substantially to provide medically necessary items and services required to be provided, if the failure adversely affected (or had the substantial likelihood of adversely affecting) the individual; (2) imposed cost sharing on individuals that were in excess of the cost sharing permitted; (3) expelled or refused to re-enroll an individual; (4) engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrolling by eligible individuals with the sponsor's plan whose medical condition or history indicates a need for substantial future medical services; (5) misrepresented or falsified information; (6) failed to comply with other specified requirements; or (7) employed or contracted with any individual or entity that was excluded from Medicare or Medicaid participation for the provision of health care, utilization review, medical social work, or administrative services, or employed or contracted with any entity for the provision through such an excluded individual or entity.

The remedies would include civil money penalties of not more than $25,000 for each determination of a failure described above or with respect to certain failures (such as denying enrollment to persons with a preexisting medical condition or misrepresenting information furnished to the Secretary), of not more than $100,000. In cases of the latter, the Secretary could also levy a $15,000 fine for each individual not enrolled. In the case of a plan sponsor determined to have charged excess premiums, the Secretary could also recover twice the excess amount and return the excess amount to the affected individual. In addition, the Secretary could suspend enrollment of individuals and payment to the plan sponsor after notifying it of an adverse determination, until the Secretary was satisfied that the failure had been corrected or would not recur. The provisions of section 1128A (other than subsections (a) and (b)) would apply to the determinations of failures and the remedies described above.

Under his or her authority to terminate contracts, if the Secretary determined that a failure had occurred other than those described above, other intermediate sanctions could be imposed. These include: (1) civil money penalties up to $25,000 if the deficiency directly adversely affected (or had the likelihood of adversely affecting) an individual under the organization's contract; (2) penalties of not more than $10,000 for each week after the Secretary initiated procedures for imposing sanctions; and (3) suspension of enrollment until the deficiency had been corrected and the Secretary determined it was unlikely to recur. (New sec. 1895Q(f))

g. Procedures for Imposing Sanctions. The Secretary could terminate a contract or impose the sanctions described above in accordance with formal investigation and compliance procedures under which (A) the Secretary first provides the sponsor with reasonable opportunity to develop and implement a corrective action plan, which the sponsor fails to do, (B) the Secretary considers aggravating factors such as whether the sponsor has a history of deficiencies or has not taken action to correct those the Secretary brought to its attention, (C) there are no unreasonable or unnecessary delays between finding a deficiency and imposing sanctions, and (D) the Secretary provides reasonable notice and opportunity for a hearing, including the right to appeal an initial decision. (New sec. 1895Q(b))

Conference agreement

The conference agreement follows the House bill.

The conference agreement does not include the provision for termination of contracts if the plan was operating in a manner that was not in the best interests of the individuals covered under the contract.

Note that New Section 1858 of the Conference Agreement on "Standards for MedicarePlus Information Transactions and Data Elements," are discussed under Subtitle H, Part D of the Conference Report.

10. DUPLICATION AND COORDINATION OF MEDICARE-RELATED PRODUCTS (SEC. 15003 OF HOUSE BILL)

Current law

Many Medicare beneficiaries purchase private health insurance to supplement their Medicare coverage. These individually purchased policies are commonly known as Medigap policies. OBRA 90, P.L. 101–508 provided for a standardization of Medigap policies. OBRA 90 also substantially modified the antiduplication provision contained in law. The intent of the OBRA 90 anti-duplication provision was to prohibit sales of duplicative Medigap policies. However, the statutory language applied, with very limited exceptions, to all "health insurance policies" sold to Medicare beneficiaries. Observers noted that this provision could thus apply to a broad range of policies including hospital indemnity plans, dread disease policies, and long-term care insurance policies.

The Social Security Amendments of 1994 (P.L. 103–432) included a number of technical modifications to the Medigap statute, including modifications to the anti-duplication provisions. Under the revised language, it is illegal to sell or issue the following policies to Medicare beneficiaries: (i) a health insurance policy with knowledge that it duplicates Medicare or Medicaid benefits to which a beneficiary is otherwise entitled; (ii) a Medigap policy, with knowledge that the beneficiary already has a Medigap policy, or (iii) a health insurance policy (other than Medigap) with knowledge that it duplicates private health benefits to which the beneficiary is already entitled. A number of exceptions to these prohibitions are established. The sale of a medigap policy is not in violation of the provisions relating to duplication of Medicaid coverage if: (i) the State Medicaid program pays the premiums for the policy; (ii) in the case of qualified Medicare beneficiaries (QMBs), the policy includes prescription drug coverage; or (iii) the only Medicaid assistance the individual is entitled to is payment of Medicare Part B premiums.

The sale of a health insurance policy (other than a Medigap policy) that duplicates private coverage is not prohibited if the policy pays benefits directly to the individual without regard to other coverage. Further, the sale of a health insurance policy (other than a Medigap policy to an individual entitled to Medicaid) is not in violation of the prohibition relating to selling of a policy duplicating Medicare or Medicaid, if the benefits are paid without regard to the duplication in coverage. This exception is conditional on the prominent disclosure of the extent of the duplication, as part of or together with, the application statement.

P.L. 103–432 provided for the development by the National Association of Insurance Commissioners (NAIC) of disclosure statements describing the extent of duplication for each of the types of private health insurance policies. Statements were to be developed, at a minimum, for policies paying fixed cash benefits directly to the beneficiary and policies limiting benefits to specific diseases. The NAIC identified 10 types of health insurance policies requiring disclosure statements and developed statements for them. These were approved by the Secretary and published in the Federal Register on June 12, 1995.

House bill

The provision would modify the anti-duplication provisions. It would be unlawful to sell to a Medicare beneficiary (including a person under MedicarePlus) a health insurance policy (other than a Medigap policy) with knowledge that it duplicated benefits under Medicare or Medicaid. It would be unlawful to sell, to persons not electing MedicarePlus, a Medigap policy with knowledge that the person is entitled to benefits under another Medigap policy. It would be unlawful to sell to a person electing MedicarePlus a Medigap policy duplicating benefits to which the individual is otherwise eligible under Medicare or another Medigap policy. A policy would be considered duplicative if the policy provided specific reimbursement for identical items and services to the extent paid for under Medicare. A policy would not be considered duplicative if it provided for payment of benefits without regard to other health benefits coverage of the individual. The provision would change the disclosure requirements contained in P.L. 103–432 to require plans to disclose the extent to which they may coordinate benefits with Medicare as part of their outlined coverage.

A health insurance policy (or a rider to an insurance contract which is not a health insurance policy) that coordinates against or excludes items and services covered under Medicare, and for policies sold after January 1, 1996, discloses such coordination or exclusion in the policy's outline of coverage would not be considered duplicative. For this purpose, health insurance policies would include policies providing benefits for long-term care, nursing home care, home health care, or community-based care.

The provision would prohibit the imposition of criminal or civil penalties or the bringing or continuing of legal action relating to selling duplicative policies if the penalty or action was based on actions occurring after November 1, 1991 and before enactment of OBRA of 1995 and if the policy was not duplicative under the revised language. The provision would also prohibit a State from imposing any requirement related to the sale or issuance of a policy (or rider) to a Medicare beneficiary based on the premise that the policy or rider was duplicative. The provision would require the Secretary to report within 3 years of enactment on the advisability of restricting the sale to Medicare beneficiaries of health insurance policies that duplicate other insurance policies the individual may have.

The provision would specifically exclude MedicarePlus products from the definition of Medigap policies. It would also exempt health insurance products sold to persons electing MedicarePlus from requirements relating sale of standardized benefits packages and minimum loss ratios.

The provision would make it unlawful to sell or issue a health insurance policy covering expenses which would otherwise be counted toward meeting the annual deductible amount under a high deductible/medisave product.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision with a modification.

It is the intent of the conferees that this provision be administered as though it were included in OBRA 1990. The agreement specifies that it is illegal to sell suppplemental policies that cover the deductible for persons who have high-deductible MedicarePlus plans.

11. TRANSITIONAL RULES FOR CURRENT MEDICARE HMO PROGRAM (SEC. 15004 OF HOUSE BILL; SEC. 7002 OF SENATE BILL)

Current law

No provision.

House bill

a. Termination of Current Contracts. The Secretary would be prohibited from entering into any new risk sharing contract under section 1876 with an eligible organization for any contract year beginning on or after the date MedicarePlus standards are first established with respect to MedicarePlus organizations that are insurers or health maintenance organizations unless a contract with the organization had been in effect under section 1876 for the previous contract year. The Secretary could not extend or continue any risk-sharing contract for any contract year beginning on or after one year after the MedicarePlus standards are established.

The Secretary would also be prohibited from entering into any cost reimbursement contract under section 1876 beginning in any contract year starting on or after the enactment of this legislation. The Secretary could not extend or continue any cost reimbursement contract for any contract year beginning on or after January 1, 1998.

b. Conforming Payment Rates. For individuals entitled to benefits under both part A and part B, payments for risk-sharing contracts for months beginning with January 1996 would be computed by substituting the payment rates specified in this bill in as timely a manner as possible. For individuals entitled to benefits only under part B, the substitution would be based upon the proportion of those rates that reflects the proportion of payments under title XVIII attributable to part B. Payments under cost reimbursement contracts under section 1876(a) would take into account the adjustments to part A and part B payments made by this legislation.

c. Elimination of 50:50 Rule. The 50:50 rule under section 1876(f)] would not apply to contract years beginning on or after January 1, 1996.

d. HMO Limits on Deductibles. No provision.

Senate bill

a. Termination of Current Contracts. Section 1876 would not apply to risk-sharing contracts effective for contract years beginning on or after January 1, 1997. An individual who is enrolled in part B only and is enrolled in an organization with an 1987 contract on December 31, 1996, may continue his or her enrollment. The Secretary would be required to issue regulations relating to such individuals and organizations not later than July 1, 1996.

b. Conforming Payment Rates. (See sec. 7003 of the bill, as described under F(i) of the Senate provisions above.)

c. Elimination of 50:50 Rule. No specific provision, but section 1876 of the Social Security Act would terminate in 1997.

d. HMO Limits on Deductibles. If a member certifies that a Medicare Choice account has been established for his or her benefit, an HMO may reduce the basic health services payment otherwise determined under section 1301(a) of the Public Health Service Act by requiring payment of a deductible by the member.

Conference agreement

The conference agreement follows the House provision with a modification.

The Secretary would be prohibited from entering into, renewing, or continuing any risk-sharing contract for any contract year beginning on or after the date standards are established for MedicarePlus organization or in the case of such an organization with a contract in effect as of the date standards were established, one year after such date. The Secretary could not enter into, renew, or continue any risk-sharing contract for any contract year beginning on or after January 1, 2000.

An individual who is enrolled in part B only and was enrolled in an organization with a risk-sharing contract on December 31, 1996, could continue his or her enrollment. The Secretary would be required to issue regulations relating to such individuals and organizations not later than July 1, 1996.

PART 2. SPECIAL RULES FOR MEDICAREPLUS MEDICAL SAVINGS ACCOUNTS

1. DESCRIPTION OF TAXATION OF MEDICARE MEDICAL SAVINGS ACCOUNTS

Present law

Under present law, the value of Medicare coverage and benefits is not includible in taxable income. There are no specific tax provisions for Medicare medical savings accounts ("MMSAs") or Rebate MSAs.

House bill

In general

Under the House bill, individuals who are eligible for Medicare may choose either the traditional Medicare program or a plan with a high deductible insurance policy and an MMSA. To the extent an individual chooses such a plan, the Secretary of Health and Human Services makes a specified contribution directly into an MMSA designated by the individual. Only contributions by the Secretary of Health and Human Services could be made to an MMSA and such contributions are not taxable. Income earned on amounts held in an MMSA are not currently includible in taxable income. Withdrawals from an MMSA are excludable from taxable income if used for the qualified medical expenses of the MMSA holder.

Taxation of distributions from an MMSA

Distributions from an MMSA that are used to pay the qualified medical expenses of the account holder are excludable from taxable income. Qualified medical expenses generally are defined as under the rules relating to the itemized deduction for medical expenses (sec. 213). However, for this purpose, qualified medical expenses do not include any insurance premiums other than premiums for long-term care insurance. Distributions from an MMSA that are excludable from gross income cannot be taken into account for purposes of the itemized deduction for medical expenses.

Distributions for purposes other than qualified medical expenses are includible in taxable income. An additional tax of 50 percent of the amount includible in taxable income applies to the extent the total distributions for purposes other than qualified medical expenses in a taxable year exceed the amount by which the value of the MMSA as of December 31, of the preceding taxable year exceeds 60 percent of the deductible of the plan under which the individual is covered. The additional tax does not apply to distributions on account of the disability or death of the account holder.

The provision includes rules that apply on the death of the MMSA owner. No estate tax applies, and the income tax treatment depends on who is the beneficiary.

Effective date

The provision is effective with respect to taxable years beginning after December 31, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with modifications. Under the conference agreement, as under the House bill, individuals enrolled in a high deductible plan automatically have contributions made to a high deductible MMSA. In addition, under the conference agreement, if an individual chooses a MedicarePlus option other than the high deductible plan, the individual may direct that the difference between the Medicare payment amount and the cost of the plan is deposited in a rebate MMSA. The Rebate MSA is separate from and cannot be commingled with the high deductible MMSA.

Rebate MMSAs are generally subject to the same rules as high deductible MMSAs, except with respect to the taxation of distributions for nonmedical purposes. With respect to rebate MMSAs, such distributions are includible in income, and subject to a 10-percent additional tax unless the distribution is made after death or disability. The 50-percent excise tax rule does not apply to a Rebate MSA.

2. TAX TREATMENT OF REBATES

Present law

Present law does not provide for cash payments to individuals under Medicare.

House bill

Under the House bill, certain individuals are entitled to cash rebates under the MedicarePlus program. These rebates are not includible in income.

Effective date.—The provision applies to rebates received after the date of enactment.

Senate amendment

Under the Senate amendment, certain individuals are entitled to cash rebates under the Medicare Choice program. These rebates are includible in income.

Effective date.—Same as the House bill.

Conference agreement

The conference agreement generally follows the House bill with modifications.

PART 3. SPECIAL ANTITRUST RULES FOR PROVIDER SPONSORED ORGANIZATIONS

1. APPLICATION OF ANTITRUST RULE OF REASON TO PROVIDER SERVICE NETWORKS (SEC. 15021 OF THE HOUSE BILL)

Current law

Under Federal antitrust law, agreements among competitors that fix prices or allocate markets are per se (automatically) illegal. Some joint activities, however, if deemed to create an entity separate from and in addition to the competitors who create them (i.e., true joint ventures), are judged under the rule of reason, which finds them legal if they are considered reasonable. The Department of Justice and the Federal Trade Commission have issued Statements of Enforcement Policy Relating to Health Care and Antitrust, pursuant to which they have attempted to indicate the limited circumstances under which they will consider "physician network joint ventures" not violations of Federal antitrust law.

House bill

Rule of Reason Standard. This provision states that the conduct of a provider service network in negotiating, making, or performing a contract (including the establishment and modification of a fee schedule and the development of a panel of physicians), to the extent such contract is for the purpose of providing health care services to individuals under the terms of a health benefit plan, would not be a per se violation of Federal or State antitrust laws. In addition, the conduct of any member of such a provider service network for the purpose of providing such health care services under a contract to provide health care services to individuals would not be deemed illegal per se under Federal or State antitrust laws. Such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition in properly defined markets.

Definitions. This section defines "antitrust laws" to include those set out in subsection (a) of the first section of the Clayton Act, 15 U.S.C. § 12, as well as § 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, to the extent that § 5 applies to unfair methods of competition. "Health benefit plan" is defined as a hospital or medical expense incurred policy or certificate, a hospital or medical service plan contract, a health maintenance subscriber contract, or a multiple employer welfare arrangement or employee benefit plan (as defined under ERISA). "Health care provider" is defined as any individual or entity engaged in the delivery of health care services that must be licensed or certified by State law or regulation to deliver such services. "Health care service" means any service for which payment may be made under a health benefit plan, including services related to the delivery or administration of such service. "Provider services network" is defined as an organization that meets the following requirements: It is organized by, operated by, and composed of members who are health care providers and for purposes that include health care services. It is funded in part by capital contributions made by the members of such organization. With respect to each contract made by such organization for the purpose of providing a type of health care service to individuals under the terms of a health benefit plan, the organization requires all members of the organization to agree to provide health care services of such type under such contract, receives the compensation paid for the provision of such health care services, and provides for the distribution of such compensation. It has established programs based on written guidelines to review the quality, efficiency, and appropriateness of treatment methods, health care services, and all patients participating in the health benefit plan, as well as internal procedures to correct any identified deficiencies, to monitor and control utilization of health care services in order to improve efficient care and eliminate the provision of unnecessary health care services. It coordinates the delivery of health care services by all health care providers to all patients participating in the health care plan so as to enhance the quality of health care services provided. And, it has established a grievance and appeal process to review and promptly resolve patient or beneficiary grievances or complaints. "State" is defined as the States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Issuance of Guidelines. This provision requires the Attorney General and the Federal Trade Commission, within 120 days after enactment of this bill, to issue joint guidelines specifying the enforcement policies and analytical principles they will apply with respect to the operation of the rule of reason standard.

Senate bill

No provision.

Conference agreement

The conference agreement generally follows the House bill with modifications.

The Rule of Reason standard is made applicable to members of a provider-sponsored organization and to members of an unaffiliated group of health care providers.

Protected conduct includes the exchange of information among health care providers relating to costs, sales, profitability, marketing, prices, or fees of any health care product or service if the exchange of information was solely for the purpose of establishing a provider-sponsored organization and reasonably required to do so.

PART 4. COMMISSIONS

1. MEDICARE PAYMENT REVIEW COMMISSION. (SEC. 15031 OF HOUSE BILL)

Current law

The Prospective Payment Assessment Commission was established by Congress through the Social Security Act Amendments of 1983 (P.L. 98–21). The Commission is charged with reporting each year its recommendation of an update factor for PPS payment rates and for other changes in reimbursement policy. It is also required each year to submit a report to Congress which provides background information on trends in health care delivery and financing. The Physician Payment Review Commission was established by the

Congress through the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99–272). It was charged with advising and making recommendations to the Congress on methods to reform payment to physicians under the Medicare program. In subsequent laws, Congress mandated additional responsibilities relating to the Medicare and Medicaid programs as well as the health care system more generally. Both Commissions are appointed by the Director of the Office of Technology Assessment and are funded through appropriations from the Medicare trust funds.

House bill

The provision would establish the Medicare Payment Review Commission (hereafter referred to as "the Commission") to review and make recommendations to Congress concerning payment policies under this title. The Commission would be required to submit a report to Congress by June 1 of each year containing an examination of issues affecting the Medicare program, including implications of changes in health care delivery and in the market for health care services on the Medicare program. The Commission would be authorized to submit from time to time other reports as it deemed appropriate. By May 1, 1997, it would be required to submit a report to Congress on major issues in implementation and further development of the MedicarePlus program. The Secretary would be required to respond to recommendations of the Commission in notices of rulemaking proceedings.

The Commission would be charged with the following specific responsibilities, including reviewing: (1) the appropriateness of the methodology for making payments to the health plans; (2) the appropriateness of the risk adjustment mechanisms and the need to adjust such mechanisms to take into account health status; (3) implications of risk selection; (4) the development and implementation of quality assurance mechanisms with respect to MedicarePlus organizations; (5) the impact of the MedicarePlus program on beneficiary access to care; (6) the feasibility and desirability of extending the rules for open enrollment that apply during the transition period to apply in each county during the first 2 years in which MedicarePlus products are made available; and (7) other issues in implementation and further development of the MedicarePlus program.

The Commission would also be required to review specific aspects of the failsafe budget mechanism established under the bill, including: (1) the appropriateness of the expenditure projections by the Secretary and growth factors for each Medicare sector; (2) the appropriateness of the mechanism for implementing reductions in payment amounts for different sectors; (3) the impact of the failsafe mechanism on provider participation; and (4) the appropriateness of the Medicare benefit budget, especially for fiscal years after 2002.

In addition, the Commission would be required to review payments policies under Medicare parts A and B (fee-for-service), including: (1) factors affecting expenditures in different sectors; (2) payment methodologies; and (3) the impact of payment policies on access and quality of care. It would also look at the effect of Medicare payment policies on the delivery of Medicare services and assess the implications of changes in the health services market on Medicare.

The Commission would be composed of 15 members appointed by the Comptroller General, with the first appointments being made by March 31, 1996. These members would have to meet specific qualifications, (such as national recognition for their expertise in health finance), including representatives of consumers and the elderly. Consideration in the initial appointment would be given to individuals who were already serving on the Physician Payment Review Commission or the Prospective Payment Assessment Commission. Commissioners would serve for 3-year terms. The bill provides for a mechanism for filling vacancies, compensating commissioners, appointing a chair and vice chair; convening meetings; and providing for staff, experts, and consultants. The Commission would be authorized to secure directly from any department or agency information to carry out these provisions. It would be required to collect and assess information (which would be available on an unrestricted basis to GAO). The Commission would be subject to periodic audit by GAO.

The provision authorizes such sums as may be necessary to be appropriated from the Medicare trust funds (60 percent part A and 40 percent from part B). The Comptroller General would be required to provide for appointment of members to the Commission by March 31, 1996. The Prospective Payment Assessment Commission and Physician Payment Review Commission would be abolished within 30 days after a majority of the Medicare Payment Review Commission were appointed. To the extent possible, the Comptroller General would be required to provide for the transfer from the former to the new commission assets and staff without any loss of benefits or seniority by virtue of such transfers. The Commission would be responsible for the preparation and submission of reports required by law to be submitted (and which had not been submitted by the time it was established) by the former commissions.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision with modifications.

With respect to Commission responsibilities, the conference agreement deletes "appropriateness" in the charge to the Commission to review payment and risk adjustment methodology.

The conference agreement does not include the provision requiring the Commission to review specific aspects of the failsafe budget mechanism established under the bill.

It is the intent of the conferees that to the extent possible, in first appointing members to the Commission, the Comptroller General consider appointing individuals who (as of the date of enactment of this section) were serving on ProPAC and PPRC.

In addition, it is the intent of the conferees that the Commission analyze and report on the reasonableness of the ACR, looking at any amounts being charged above the contribution rate and assessing the relationship between that charge and insuring companies' commercial rates. The Commission would also analyze and assess the prevalence of plans in major areas that provide MedicarePlus for the Government's capitated amount.

2. COMMISSION ON THE EFFECT OF THE BABY BOOM GENERATION ON THE MEDICARE PROGRAM (SEC. 15032 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would establish a commission to be known as the Commission on the Effect of the Baby Boom Generation on the Medicare Program, hereafter referred to as "the Commission." It would be required to: (1) examine the financial impact on the Medicare program of the significant increase in the number of Medicare eligible individuals which will occur approximately during 2010 and lasting for approximately 25 years, and (2) make specific recommendations to Congress with respect to a comprehensive approach to preserve the Medicare program for the period during which such individuals are eligible for Medicare. In making its recommendations, the Commission would be required to consider: (1) the amount and sources of Federal funds to finance Medicare, including innovative financing methods; (2) the most efficient and effective manner of administering the program, including the appropriateness of continuing the failsafe mechanism after 2002; (3) methods used by other nations to respond to comparable demographics; (4) modifying age-based eligibility to correspond to that under the OASDI program; and (5) trends in employment-related health care for retirees, including the use of medical savings accounts and similar financing devices.

The Commission would be composed of 15 members, 3 appointed by the President, 6 by the Majority Leader of the Senate in consultation with the Minority Leader, of whom no more than 4 are of the same party; and 6 by the Speaker of the House, after consultation with the Minority Leader, of whom no more than 4 are in the same party. The provision spells out the appointment of a chair and vice chair, appointment of staff and consultants, compensation, the procedure for filling vacancies, and requirements relating to meetings and quorums. Upon request of the Commission, the Comptroller General would be required to conduct such studies or investigations as the Commission determined were needed to carry out its duties. The Director of CBO would be required to provide the commission with cost estimates, for which CBO would be compensated. The Commission would be authorized to detail to it employees of Federal agencies, and to obtain technical assistance and information from Federal agencies.

The Commission would be required to submit to Congress a report, no later than May 1, 1997, containing its findings and recommendations regarding how to protect and preserve the Medicare program in a financially solvent manner until 2030 (or, if later, throughout a period of projected solvency of the Federal Old-Age and Survivors Insurance Trust Fund). The report would be required to include detailed recommendations for appropriate legislative initiatives respecting how to accomplish this objective. The Commission would terminate 60 days after the date of submission of the mandated report. An amount of $1.5 million would be authorized to be appropriated.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

3. CHANGE IN APPOINTMENT OF ADMINISTRATOR OF HCFA (SEC. 15033 OF HOUSE BILL)

Current law

The Administrator of HCFA is appointed by the President with the advise and consent of the Senate.

House bill

Under the bill, the Administrator of HCFA would be appointed by the Secretary of Health and Human Services. The amendment would become effective on the date of enactment and would apply to Administrators appointed on or after the date of enactment.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

PART 5. TAX TREATMENT OF HOSPITALS WHICH PARTICIPATE IN PROVIDER-SPONSORED ORGANIZATIONS (SEC. 15041 OF THE HOUSE BILL)

Present law

To qualify as a charitable tax-exempt organization described in Internal Revenue Code (“Code”) section 501(c)(3), an organization must be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster international sports competition, or for the prevention of cruelty to children or animals. Although section 501(c)(3) does not specifically mention furnishing medical care and operating a nonprofit hospital, such activities have long been considered to further charitable purposes, provided that the organization benefits the community as a whole.[1]

No part of the net earnings of a 501(c)(3) organization may inure to the benefit of any private shareholder or individual. No substantial part of the activities of a 501(c)(3) organization may consist of carrying on propaganda, or otherwise attempting to influ-

[1] Although not-for-profit hospitals generally are recognized as tax-exempt by virtue of being “charitable” organizations, some may also qualify for exemption as “educational organizations” because they are organized and operated primarily for medical education purposes.

ence legislation, and such organization may not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office. In addition, under section 501(m), an organization described in section 501(c)(3) or 501(c)(4) is exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance.

A tax-exempt organization may, subject to certain limitations, enter into a joint venture or partnership with a for-profit organization without affecting its tax-exempt status. Under current ruling practice, the IRS examines the facts and circumstances of each arrangement to determine (1) whether the venture itself and the participation of the tax-exempt organization therein furthers a charitable purpose, and (2) whether the sharing of profits and losses or other aspects of the arrangement entail improper private inurement or more than incidental private benefit.[2]

House bill

The House bill provides that an organization shall not fail to be treated as organized and operated exclusively for a charitable purpose for purposes of Internal Revenue Code (the "Code") section 501(c)(3) solely because a hospital which is owned and operated by such organization participates in a provider-sponsored organization ("PSO") (as defined in section 1845(a)(1) of the Social Security Act), whether or not such PSO is exempt from tax. Thus, participation by a hospital in a PSO (whether taxable or tax-exempt) would be deemed to satisfy the first part of the inquiry under current IRS ruling practice.[3]

The House bill does not change present-law restrictions on private inurement and private benefit. However, the House bill provides that any person with a material financial interest in such a PSO shall be treated as a private shareholder or individual with respect to the hospital for purposes of applying the private inurement prohibition in Code section 501(c)(3). Accordingly, the facts and circumstances of each PSO arrangement will be evaluated to determine whether the arrangement entails impermissible private inurement or more than incidental private benefit (e.g., where there is a disproportionate allocation of profits and losses to the non-exempt partners, the tax-exempt partner makes loans to the joint venture that are commercially unreasonable, the tax-exempt partner provides property or services to the joint venture at less than fair market value, or a non-exempt partner receives more than reasonable compensation for the sale of property or services to the joint venture).

The House bill does not change present-law restrictions on lobbying and political activities. In addition, the restrictions of section 501(m) on the provision of commercial-type insurance continue to apply.

[2] See IRS General Counsel Memorandum 39862; Announcement 92–83, 1992–22 I.R.B. 59 (IRS Audit Guidelines for Hospitals). Even where no prohibited private inurement exists, however, more than incidental private benefits conferred on individuals may result in the organization not being operated "exclusively" for an exempt purpose. See, e.g., American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989).

[3] The qualification of a hospital as a tax-exempt charitable organization under section 501(c)(3) would be determined as under present law. See Rev. Rul. 69–545, 1969–2 C.B. 117.

Effective date.—The House bill is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

SUBTITLE B—FRAUD AND ABUSE

PART 1—GENERAL PROVISIONS

1. INCREASING AWARENESS OF FRAUD AND ABUSE (SEC. 15101 OF HOUSE BILL; SEC. 7103 AND SEC. 7121 OF SENATE BILL)

Current law

No provision.

House bill

a. Beneficiary Outreach Efforts. This provision would require the Secretary to make ongoing efforts to alert individuals entitled to Medicare benefits of the existence of fraud and abuse committed against the program, of the costs of such fraud and abuse, and of a toll-free telephone line operated by the Secretary to receive information about such fraud and abuse.

b. Clarification of Requirement to Provide Explanation of Medicare Benefits. The Secretary would be required to provide an explanation of Medicare benefits with respect to each item or service for which payment may be made, without regard to whether a deductible or coinsurance may be imposed with respect to the item or service.

c. Provider Outreach Efforts; Publication of Fraud Alerts. Any person may, at any time, request the Secretary to publish a special fraud alert, which is defined as a notice that informs the public of practices the Secretary considers to be suspect or of particular concern under the Medicare program or a State health care program. Upon receipt of a request for a special fraud alert, the Secretary would be required to investigate to determine whether to issue a special fraud alert. If he determines issuance of a special fraud alert appropriate, he would be required, in consultation with the Attorney General, to publish a special fraud alert in the Federal Register. In determining whether to issue a special fraud alert, the Secretary could consider whether and to what extent the practices in question may result in the consequences described in the criteria used to modify and establish safe harbors, and the extent and frequency of the conduct in question. Each notice issued by the Health Care Financing Administration that informs the public of practices the Secretary considers to be suspect or of particular concern under the Medicare program or a State health care program would be required to be published in the Federal Register, without regard to whether it was issued by a regional office of the Health Care Financing Administration.

d. Establishment of the Health Care Fraud and Abuse Data Collection Program. No provision.

Senate bill

a. Beneficiary Outreach Efforts. No provision.

b. Clarification of Requirement to Provide Explanation of Medicare Benefits. No provision.

c. Provider Outreach Efforts; Publication of Fraud Alerts. Any person may request the Inspector General to issue a special fraud alert informing the public of practices which the Inspector General considers to be suspect or of particular concern under section 1128B(b) of the Social Security Act (anti-kickback provisions). After investigation the subject matter of the request, and, if appropriate, the Inspector General shall issue a special fraud alert in response to the request, published in the Federal Register.

d. Establishment of the Health Care Fraud and Abuse Data Collection Program

In General. The Secretary of Health and Human Services is required to establish a national health care fraud and abuse data collection program for reporting final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners.

Each government agency and health plan would, on a monthly basis, report any final adverse action taken against a health care provider, supplier, or practitioner. Certain information would be included in the report, including a description of the acts or omissions and injuries upon which the final adverse action was taken. The Secretary would, however, protect the privacy of individuals receiving health care services.

The Secretary would, by regulation, provide for disclosure of the information about adverse actions, upon request, to the health care provider, supplier, or licensed practitioner and provide procedures in the case of disputed accuracy of the information. Each government agency and health plan is required to report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner in such form and manner that the Secretary prescribes by regulation.

The information in the database would be available to Federal and State government agencies and health plans. The Secretary may approve reasonable fees for the disclosure of information in the database (other than with respect to requests by Federal agencies). The amount of such a fee shall be sufficient to recover the full costs of operating the data base.

No person or entity would be held liable in any civil action with respect to any report made as required by this section, unless the person or entity knows the information is false.

Improved Prevention in Issuance of Medicare Provider Numbers. The Secretary may impose appropriate fees on physicians to cover the costs of investigation and recertification activities with respect to the issuance of identifiers for physicians who furnish services for which Medicare payments are made.

Conference agreement

a. Beneficiary Outreach Efforts. The conference agreement does not include the House provision.

b. Clarification of Requirement to Provide Explanation of Medicare Benefits. The conference agreement includes the House provision.

c. Provider Outreach Efforts; Publication of Fraud Alerts. The conference agreement includes the Senate provision with a modification that fraud alerts may be issued with regard to practices under the Medicare program or a State health care program.

d. Establishment of the Health Care Fraud and Abuse Data Collection Program. The conference agreement includes the Senate provision with a modification eliminating the definitions of "health care provider" and "supplier". The conference agreement also clarifies that this program is an authorized use of funds under the fraud and abuse control program.

2. BENEFICIARY INCENTIVE PROGRAMS (SEC. 15102 OF HOUSE BILL; SEC. 7152 OF SENATE BILL)

Current law

No provision.

House bill

a. Program to Collect Information on Fraud and Abuse. This provision would require the Secretary, within three months after enactment of this bill, to establish a program to encourage individuals to report to the Secretary information on individuals and entities who are engaging or who have engaged in acts or omissions that constitute grounds for sanctions under sections 1128, 1128A, or 1128B of the Social Security Act, or who have otherwise engaged in fraud and abuse against the Medicare program. If an individual reports information to the Secretary under this program that serves as a basis for the collection by the Secretary or the Attorney General of any amount of at least $100 (other than amounts paid as a penalty under section 1128B), the Secretary may pay a portion of the amount collected to the individual, under procedures similar to those applicable under section 7623 of the Internal Revenue Code of 1986.

b. Program to Collect Information on Program Efficiency. The Secretary would be required, within three months after enactment of this bill, to establish a program to encourage individuals to submit to the Secretary suggestions on methods to improve the efficiency of the Medicare program. If the Secretary adopts a suggestion and savings to the program result, the Secretary could make a payment to the individual of an amount the Secretary considers appropriate.

Senate bill

a. Program to Collect Information on Fraud and Abuse. This provision would require the Secretary, within three months after enactment of this bill, to establish a program to encourage individuals to report to the Secretary information on individuals and entities who are engaging or who have engaged in acts or omissions that constitute grounds for sanctions under sections 1128, 1128A, or 1128B of the Social Security Act, or who have otherwise engaged in fraud and abuse against the Medicare program. If an individual reports information to the Secretary under this program that serves as a basis for the collection by the Secretary or the Attorney General of any amount of at least $100 (other than amounts paid as a penalty under section 1128B), the Secretary may pay a portion of the amount collected to the individual, under procedures similar to those applicable under section 7623 of the Internal Revenue Code of 1986.

b. Program to Collect Information on Program Efficiency. The Secretary would be required, within three months after enactment of this bill, to establish a program to encourage individuals to submit to the Secretary suggestions on methods to improve the efficiency of the Medicare program. If the Secretary adopts a suggestion and savings to the program result, the Secretary could make a payment to the individual of an amount the Secretary considers appropriate.

Conference agreement

The conference agreement includes the Senate provision with a modification adding a requirement to provide explanations of Medicare benefits under certain circumstances.

3. INTERMEDIATE SANCTIONS FOR MEDICARE HEALTH MAINTENANCE ORGANIZATIONS (SEC. 15103 OF HOUSE BILL; SEC. 7115 OF SENATE BILL)

Current Law

A contract between the Secretary and a Medicare Health Maintenance Organization (HMO) is generally for a one year term, with an option for automatic renewal. However, the Secretary may terminate any such contract at any time, after reasonable notice and an opportunity for a hearing, if the Medicare HMO has failed substantially to carry out the contract, or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the requirements of section 1876 of the Social Security Act, or if the Medicare HMO no longer substantially meets the statutory requirements contained in Section 1876(b),(c),(e) and (f).

House bill

a. Application of Intermediate Sanctions for Any Program Violations. This provision would add a ground for termination of a Medicare HMO contract by the Secretary, specifying that the Secretary may terminate such a contract if the organization is operating in a manner that is not in the best interests of the individuals covered under the contract. In addition, the Secretary would have the discretion to either terminate the contract or to impose certain intermediate sanctions on the eligible organization.

If the basis for the determination by the Secretary that an intermediate sanction should be imposed on an eligible organization is other than that the organization has failed substantially to carry out its contract with the Secretary, then the Secretary may apply intermediate sanctions as follows: civil money penalties of not more than $25,000 for each determination if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract; civil money penalties of not more than $10,000 for each week of a continuing violation; and suspension of enrollment of individuals until the Secretary is satisfied that the deficiency has been corrected and is not likely to recur.

Whenever the Secretary seeks to either terminate a Medicare HMO contract or impose intermediate sanctions on such an organization, the Secretary must do so pursuant to a formal investigation and under compliance procedures which provide the organization with an opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's adverse determination. The Secretary would impose more severe sanctions on organizations that have a history of deficiencies or that have not corrected deficiencies brought to their attention. The Secretary's compliance procedures must also include reasonable notice and opportunity for a hearing (including the right to appeal an initial decision) before the Secretary imposes any sanction or terminates the contract of a Medicare HMO, and there must not be any unreasonable or unnecessary delay between the finding of a deficiency and the imposition of sanctions.

b. Effective Date. The amendments made by this section would apply to contract years of eligible organizations beginning on or after January 1, 1996.

Senate bill

a. Application of Intermediate Sanctions for Any Program Violations. Under this section the Secretary may terminate a contract with a Medicare Health Maintenance Organization (HMO) or may impose certain intermediate sanctions on the organization if the Secretary determines that the Medicare HMO has failed substantially to carry out the contract; is carrying out the contract in a manner substantially inconsistent with the efficient and effective administration of this section; or, if the Medicare HMO no longer substantially meets the statutory requirements contained in Section 1876(b),(c),(e) and (f) of the Social Security Act.

If the basis for the determination by the Secretary that intermediate sanctions should be imposed on an eligible organization is other than that the organization has failed substantially to carry out its contract with the Secretary, then the Secretary may apply intermediate sanctions as follows: civil money penalties of not more than $25,000 for each determination if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organizations's contract; civil money penalties or not more than $10,000 for each week of a continuing violation; and suspension of enrollment of individuals until the Secretary is satisfied that the deficiency has been corrected and is not likely to recur.

Whenever the Secretary seeks to either terminate a Medicare HMO contract or impose intermediate sanctions on such an organization, the Secretary must do so pursuant to a formal investigation and under compliance procedures which provide the organization with a reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's adverse determination. In making a decision whether to impose sanctions the Secretary is required to consider aggravating factors such as whether an entity has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to their attention. The Secretary's compliance procedures must also include notice and opportunity for a hearing (including the right to appeal an initial decision) before the Secretary imposes any sanction or terminates the contract of a Medicare HMO, and there must not be any unreasonable or unnecessary delay between the finding of a deficiency and the imposition of sanctions.

b. Agreements with Peer Review Organizations. Under this section each risk-sharing contract with a Medicare HMO must provide that the organization will maintain a written agreement with a utilization and quality control peer review organization or similar organization for quality review functions.

Effective Date. The amendments made by this section shall apply to contract years beginning on or after January 1, 1996.

Conference agreement

The conference agreement includes the Senate provision.

4. VOLUNTARY DISCLOSURE PROGRAM (SEC. 15104 OF HOUSE BILL)

Current law

Current law does not provide for a program permitting the Secretary to mitigate penalties for parties who voluntarily disclose acts or omissions under Section 1128, 1128A, or 1128B. Section 1128 directs the Secretary to impose mandatory exclusions from the Medicare program and State health care programs for convictions of criminal offenses related to the delivery of an item or service under Medicare or State health care programs, as well as for convictions relating to patient abuse in connection with the delivery of a health care item or service. The Secretary has permissive exclusion authority for a number of criminal offenses relating to health care-related fraud, theft, embezzlement, financial misconduct, kickbacks, misuse of controlled substances, and activities relating to license revocations or suspensions, claims for excessive charges or unnecessary services, and the like. Section 1128A prescribes civil money penalties for a number of illegal activities relating to the submission of claims for reimbursement under the Medicare and Medicaid programs. Violations which are subject to civil money penalties include submitting claims for items or services not provided or which were false or fraudulent, providing services when not a properly licensed physician, and providing items or services by an excluded practitioner. Civil money penalties may also be imposed on a hospital which knowingly makes a payment to a physician, or a physician who knowingly accepts payment from a hospital, as inducement to limit or reduce care to a Medicare or Medicaid patient. Section 1128B sets forth criminal penalties under Medicare and State health care programs for offenses such as false statements in benefit applications or in determining rights under such benefits, concealing information relating to benefits, submitting claims from non-licensed physicians, and soliciting and receiving kickbacks for referrals or soliciting or receiving remuneration for admitting a Medicaid patient.

House bill

Under this section a new provision would be added to Title XI of the Social Security Act directing the Secretary of the Department of Health and Human Services to establish a program encouraging individuals and entities to voluntarily disclose to the Secretary information on acts or omissions which constitute grounds for the imposition of a sanction under Section 1128, 1128A, or 1128B of the Social Security Act.

Under this program the Secretary would have the authority to mitigate any applicable sanction which the Secretary might otherwise have imposed under Section 1128, 1128A or 1128B. The Secretary would not be required to reduce or mitigate applicable sanctions, but may do so, following a voluntary disclosure. This section would specify that no qui tam lawsuit could be brought under the False Claims Amendments Act of 1986, by private parties against the individual or entity with respect to a voluntarily disclosed act or omission under sections 1128, 1128A or 1128B.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

5. REVISIONS TO CURRENT SANCTIONS. (SEC. 15105 OF HOUSE BILL; SECS. 7102, 7111, 7112, 7113, 7114, 7131 OF SENATE BILL)

Current law

Section 1128 of the Social Security Act authorizes the Secretary to impose mandatory and permissive exclusions of individuals and entities from participation in the Medicare program, Medicaid program and programs receiving funds under the Maternal and Child Health Service Block Grant, or the Social Services Block Grant. Mandatory exclusions are authorized for convictions of criminal offenses related to the delivery of health care services under Medicare and State health care programs, as well as for convictions relating to patient abuse in connection with the delivery of a health care item or service. In the case of an exclusion under the mandatory exclusion authority the minimum period of exclusion could be no less than five years, with certain exceptions. Permissive exclusions are authorized for a number of offenses relating to fraud, kickbacks, obstruction of an investigation, and controlled substances, and activities relating to license revocations or suspensions, claims for excessive charges or unnecessary services, and the like.

Under Section 1128A of the Social Security Act civil monetary penalties may be imposed for false and fraudulent claims for reimbursement under the Medicare and State health care programs.

Under section 1128B, upon conviction of a program-related felony, an individual may be fined not more than $25,000 or imprisoned for not more than five years, or both.

House bill

a. Doubling the Amount of Civil Monetary Penalties. The maximum amount of civil monetary penalties set forth in Sec. 1128A of the Social Security Act would be doubled.

b. Establishment of Minimum Period of Exclusion for Certain Individuals and Entities Subject to Permissive Exclusion. This section would establish a minimum period of exclusion of three years for permissive exclusions of individuals or entities convicted, under Federal or State law, of health care criminal offenses relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct, as well as for convictions relating to obstruction of an investigation, or of a criminal offense involving misuse of controlled substances. The Secretary may determine that a shorter period than three years is appropriate in cases of mitigating circumstances, or that a longer period is appropriate because of aggravating circumstances.

Permissive exclusions in cases relating to license revocations or suspensions for reasons bearing on an individual's or entity's professional competence or financial integrity, and permissive exclusions following the suspension, exclusion or sanction or an individual or entity from any Federal or State health care program for reasons bearing on professional competence or financial integrity, would be not less than the period during which the individual's or entity's license to provide health care has been revoked or suspended, or the individual or entity has been excluded or suspended from a Federal or State health care program.

In cases where the Secretary has permissive authority to exclude an individual or entity from Medicare or State health care programs due to submission of claims for excessive charges or for medically unnecessary services, the period of exclusion would be not less than one year.

Effective Date. The amendments made by this section would apply to acts or omissions occurring on or after January 1, 1996.

c. Application of Certain Health Anti-Fraud and Abuse Sanctions to Fraud and Abuse Against Federal Health Programs. No provision.

d. Mandatory Exclusion From Participation in Medicare and State Health Care Programs. No provision.

e. Permissive Exclusion of Individuals With Ownership or Control Interest in Sanctioned Entities. No provision.

f. Sanctions Against Practitioners and Persons for Failure to Comply With Statutory Obligations. No provision.

g. Social Security Act Civil Monetary Penalties. No provision.

Senate bill

a. Doubling the Amount of Civil Monetary Penalties. No provision.

b. Establishment of Minimum Period of Exclusion for Certain Individuals and Entities Subject to Permissive Exclusion. This section would establish a minimum period of exclusion for certain permissive exclusions from participation in Medicare and State health care programs.

For convictions of misdemeanor criminal health care fraud offenses, criminal offenses relating to fraud in non-health care Federal or State programs, convictions relating to obstruction of an investigation of health care fraud offenses, and convictions of misdemeanor offenses relating to controlled substances, the minimum period of exclusion would be three years, unless the Secretary determines that a longer or shorter period is appropriate, due to aggravating or mitigating circumstances.

For permissive exclusions from Medicare or State health care programs due to the revocation or suspension of a health care license of an individual or entity, the minimum period of exclusion would not be less than the period during which the individual's or entity's license was revoked or suspended.

For permissive exclusions from Medicare or State health care programs due to exclusion from any Federal health care program or State health care program for reasons bearing on an individual's or entity's professional competence or financial integrity, the minimum period of exclusion would not be less than the period the individual or entity is excluded or suspended from a Federal or State health care program.

For permissive exclusions from Medicare or State health care programs due to a determination by the Secretary that an individual or entity has furnished items or services to patients substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care, the period of exclusion would be not less than one year.

c. Application of Certain Health Anti-Fraud and Abuse Sanctions to Fraud and Abuse Against Federal Health Programs.

This section would extend certain criminal penalties for fraud and abuse violations under the Medicare and Medicaid programs to similar violations in other Federal health care programs generally. Other Federal health care programs include health insurance plans or programs funded, in whole or part, by the Federal government, such as the Department of Defense CHAMPUS program and the Office of Personnel Management Federal Employees Health Benefit Program. Violations would include willful submission of false information or claims and anti-kickback activities in Federal health care programs. Penalties include misdemeanor and felony fines and possible imprisonment.

The Secretary may identify community service opportunities for the satisfaction of court-imposed community service obligations in cases resulting from convictions of offenses under this section.

Effective Date. January 1, 1996.

d. Mandatory Exclusion From Participation in Medicare and State Health Care Programs.

Individual Convicted of Felony Relating to Health Care Fraud. This section would require the Secretary to exclude individuals and entities from Medicare and State health care programs who have been convicted of felony offenses relating to health care fraud for a minimum five year period. The Secretary would also retain the discretionary authority to exclude individuals from Medicare and State health care programs who have been convicted of misdemeanor criminal health care fraud offenses, or who have been convicted of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in programs (other than health care programs) funded in whole or part by any Federal, State or local agency.

Individual Convicted of Felony Relating to Controlled Substance. This section would require the Secretary to exclude individuals and entities from Medicare and State health care programs who have been convicted of felony offenses relating to controlled substances for a minimum five year period. The Secretary would retain the discretionary authority to exclude individuals from Medicare and State health care programs who have been convicted of misdemeanor offenses relating to controlled substances.

Effective Date. This section would apply to convictions after the date of the enactment of this statute.

e. Permissive Exclusion of Individuals With Ownership or Control Interest in Sanctioned Entities.

Entities owned, controlled, or managed by a sanctioned individual are already subject to permissive exclusion from participation in Medicare and State health programs by the Secretary. Under this new authority an *individual* who has a direct or indirect ownership or control interest of 5 percent or more in an entity, or who is an officer or managing employee of an entity may also be excluded from participation in Medicare and State health care programs by the Secretary if the entity has previously been convicted of an offense listed in Section 1128(a) or (b)(1), (2) or (3) or otherwise excluded form program participation. Under the new provision, the culpable individual would also be subject to program exclusion, even if not initially convicted or excluded.

f. Sanctions Against Practitioners and Persons for Failure to Comply With Statutory Obligations.

Minimum Period of Exclusion for Practitioners and Persons Failing to Meet Statutory Obligations. Under this section the Secretary may exclude a practitioner or person for such period as the Secretary may prescribe, except that such period shall be not less than one year.

Repeal of "Unwilling or Unable" Conditions for Imposition of Sanction. The Secretary, in making his determination that a practitioner or person should be sanctioned for failure to comply with certain statutory obligations relating to quality of health care, will no longer be required to prove that the individual was either unwilling or unable to comply with such obligations.

g. Social Security Act Civil Monetary Penalties.

General Civil Monetary Penalties. The provisions under the Medicare and Medicaid programs which provide for civil money penalties for specified fraud and abuse violations would apply to similar violations involving other Federal health care programs. Federal health care programs would include any health insurance plans or programs funded, in whole or part, by the Federal government, such as CHAMPUS and FEHBP.

Civil money penalties and assessments received by the Secretary would be deposited into the Health Care Fraud and Abuse Control Account established under this Act.

Excluded Individual Retaining Ownership or Control Interest in Participating Entity. Any person who has been excluded from participating in Medicare or a State health care program and who retains a direct or indirect ownership or control interest of 5 percent or more in an entity, or who is an officer or managing employee of an entity that is participating in Medicare or a State health care program would be subject to a civil money penalty of not more than $10,000 for each day the prohibited relationship occurs.

Modification of Amounts of Penalties and Assessments. This section would amend the civil money penalty provisions of Section 1128A(a) by increasing the amount of a civil money penalty from $2,000 to $10,000 for each item or service involved. This section also increases the assessment which a person may be subject to from ''not more than twice the amount'' to ''not more than three times the amount'' claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim.

Claim for Item or Service Based on Incorrect Coding or Medically Unnecessary Services. This section would add two practices to the list of prohibited practices for which civil money penalties may be assessed. The first occurs when a person (including an organization or agency, but excluding a beneficiary) engages in a pattern or practice of presenting a claim for an item or service based on a code that the person knows or has reason to know will result in greater payments than appropriate. The second is the practice whereby a person submits a claim or claims that the person knows or has reason to know is for a medical items or services that are not medically necessary.

Permitting Secretary to Impose Civil Monetary Penalty. This section would permit the Secretary to impose an intermediate civil money penalty of not more than $10,000 per violation for violations of the Medicare/Medicare anti-kickback statute. In addition, such person (or entity, but not a beneficiary) shall be subject to an assessment of not more than twice the total amount of the remuneration offered, paid, solicited, or received in the prohibited activity. Calculation of the assessment amount shall be without regard to whether some portion may have been intended to serve a non-prohibited purpose.

Sanctions Against Practitioners and Persons for Failure to Comply with Statutory Obligations. The Secretary has the authority to impose administrative sanctions against practitioners and persons who have failed to comply with certain statutory obligations relating to the quality of medical care rendered. Under this section the Secretary may require, in cases involving medically improper or unnecessary health care services, that the practitioner or person pay the United States an amount up to $10,000 for each instance of medically improper or unnecessary health care services. In such cases the practitioner or person would be permitted to continue to be eligible to receive reimbursement for health care services rendered to program beneficiaries.

Procedural Provisions. The procedural provisions outlined in Section 1128A, such as notice, hearings, and judicial review rights shall apply to civil money penalties assessed against Medicare Health Maintenance Organizations in the same manner as they apply to civil money penalties assessed against health care providers generally.

Prohibition Against Offering Inducements to Individuals Enrolled Under Programs or Plans. This section would add a new practice to the list of prohibited practices for which civil money penalties may be assessed. Any person (including an organization or agency, but excluding a beneficiary) who offers remuneration to an individual eligible for benefits under Medicare or a State health plan to induce that individual to order or receive from a particular provider, practitioner or supplier any item or service reimbursable under Medicare or a State health care program shall be subject to the various civil money penalties, assessments and exclusion provisions of section 1128A of the Social Security Act.

The term "remuneration" is defined to include the waiver of part or all of coinsurance and deductible amounts, as well as transfers of items or services for free, or for other than fair market value. There are exceptions to this definition. The waiver of part or all of coinsurance and deductible amounts would not be considered remuneration under this section if the waiver is not offered as part of any advertisement or solicitation, the person does not routinely waive coinsurance or deductible amounts, and the person either waives the coinsurance and deductible amounts because the individual is in financial need, or fails to collect the amounts after reasonable collection efforts, or provides for a permissible waiver under regulations issued by the Secretary. In addition, the term remuneration would not include differentials in coinsurance and deductible amounts as part of a benefit plan design if the differentials have been disclosed in writing to all beneficiaries, third party payors, and providers, and if the differentials meet the standards defined in the Secretary's regulations. Remuneration would also not include incentives given to individuals to promote the delivery of preventive care under the Secretary's regulations.

Effective Date. January 1, 1996.

Conference agreement

a. Doubling the Amount of Civil Monetary Penalties. The conference agreement does not include the House provision.

b. Establishment of Minimum Period of Exclusion for Certain Individuals and Entities Subject to Permissive Exclusion. The conference agreement includes the Senate provision.

c. Application of Certain Health Anti-Fraud and Abuse Sanctions to Fraud and Abuse Against Federal Health Programs. The conference agreement includes the Senate provision with a clarification of the term "Federal Health Care Program".

d. Mandatory Exclusion From Participation in Medicare and State Health Care Programs. The conference agreement includes the Senate provision.

e. Permissive Exclusion of Individuals With Ownership of Control Interest in Sanctioned Entities. The conference agreement includes the Senate provision with a clarification regarding certain individuals who are liable under this provision.

f. Sanctions Against Practitioners and Persons for Failure to Comply With Statutory Obligations. The conference agreement includes the Senate provision.

g. Social Security Act Civil Monetary Penalties. The conference agreement includes the Senate provision with a clarification regarding excluded individuals who retain an ownership interest in certain entities participating in Medicare or State health care programs, and a clarification regarding the applicable level of intent. In addition, the provision permitting the Secretary to impose civil monetary penalties for violations of the anti-kickback statute is eliminated.

6. CONSOLIDATED FUNDING FOR ANTI-FRAUD AND ABUSE ACTIVITIES (SEC. 15106 OF HOUSE BILL; SEC. 7101 OF SENATE BILL)

Current law

Currently Medicare's program integrity functions are subsumed under Medicare's general administrative budget. These functions are performed, along with general claims processing functions, by insurance companies under contract with the Health Care Financing Administration.

House bill

a. Establishment of Medicare Integrity Program. This provision would establish a Medicare Integrity Program under which the Secretary would promote the integrity of the Medicare program by entering into contracts with eligible private entities to carry out certain activities. These activities would include the following: (1) review of activities of providers of services or other individuals and entities furnishing items and services for which payment may be made under the Medicare program, including medical and utilization review and fraud review, (2) audit of cost reports, (3) determinations as to whether payment should not be, or should not have been, made by reason of the Medicare as secondary payor provisions, and recovery of payments that should not have been made, and (4) education of providers of services, beneficiaries, and other persons with respect to payment integrity and benefit quality assurance issues. The Secretary would impose certain eligibility requirements on entities entering into contracts under this Medicare Integrity Program.

The Secretary would be authorized to establish, by regulation, procedures for entering into contracts, including procedures relating to the number of contracts and the timing of contracts, competitive procedures for new contracts, and waiver of competitive procedures for renewed contracts under certain circumstances.

The Secretary would be required to provide, by regulation, for the limitation of a contractor's liability under the Medicare Integrity Program. The Secretary would employ, to the extent he finds appropriate, the same or comparable standards and other substantive and procedural provisions as are contained in section 1157 of the Social Security Act.

The Secretary would be required to transfer, for each fiscal year, from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, to the Medicare Anti-Fraud and Abuse Trust Fund an amount equal to the total amount of expenditures that the Secretary would have made under this title during the year to carry out the activities described herein if the Medicare Integrity Program had not been in effect.

Such transfer would be in an allocation as reasonably reflects the proportion of such expenditures associated with part A and part B.

There would be established in the Treasury of the United States the Anti-Fraud and Abuse Trust Fund, which would consist of such gifts and bequests as may be made unconditionally to the Trust Fund and such amounts as may be deposited in the Trust Fund as provided in this section. The Secretary of the Treasury would be required to invest such amounts of the Funds as he determines are not required to meet current withdrawals from the Fund in government account serial securities. Any interest derived from investments would be credited to the Fund.

Certain amounts would be deposited in the Trust Fund, including moneys from fines, penalties and damages assessed under various Medicare and State health care programs. There would be appropriated from the Trust Fund for each fiscal year such amounts as are necessary to carry out the Medicare Integrity Program, subject to specific limitations for fiscal years 1996 through 2002. The Secretary would submit an annual report to Congress on the revenues generated and disbursed by the Trust Fund each fiscal year.

Elimination of FI and Carrier Responsibility for Carrying Out Activities Subject to Program. This provision prohibits any agency, organization, or carrier, from carrying out (or receiving payment for carrying out) any activity pursuant to an agreement under this section to the extent that the activity is carried out pursuant to a contract under the Medicare Integrity Program.

Conforming Amendment. This section specifies that certain penalties and assessments be deposited in the Trust Fund as provided herein.

Direct Spending for Medicare-Related Activities of Inspector General. Under this section certain amounts, subject to specified limitations, are appropriated from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medicare Insurance Trust Fund to the Inspector General of HHS for activities relating to the Medicare program. These activities include prosecuting medicare-related matters through criminal, civil, and administrative proceedings, conducting investigations, audits and inspections, and conducting provider and consumer education activities regarding fraud and abuse provisions.

b. Fraud and Abuse Control Program. No provision.

Senate bill

a. Establishment of Medicare Integrity Program. No provision.

b. Fraud and Abuse Control Program. The Secretary of the Department of Health and Human Services (acting through the Office of the Inspector General) and the Attorney General would be required to jointly establish a national health care fraud and abuse control program to coordinate Federal, State and local law enforcement efforts to combat fraud and abuse in the delivery of and payment for health care in the United States. To facilitate the enforcement of this fraud and abuse control program the Secretary and Attorney General would be authorized to conduct investigations, audits, evaluations and inspections relating to the delivery and payment for health care, and would be required to arrange for the sharing of data with representatives of public and private third party payers. This program, implemented by guidelines issued by the Secretary and the Attorney General, would also facilitate the enforcement of applicable Federal statutes relating to health care fraud and abuse, and would provide for the provision of guidance to health care providers through the issuance of safe harbors, interpretive rulings and special fraud alerts.

The Secretary and Attorney General would consult with and share data with representatives of health plans. Guidelines issued by the Secretary and Attorney General would ensure the confidentiality of information furnished by health plans, providers and others, as well as the privacy of individuals receiving health care services. The Inspector General would retain all current authorities and would receive reimbursements for costs of investigations, audits and other functions under this section.

For purposes of this section the term "health plan" means a plan or program that provides health benefits through insurance or otherwise. Such plans include health insurance policies, contracts of service benefit organizations, and membership agreements with health maintenance organizations or other prepaid health plans.

Establishment of Health Care Fraud and Abuse Control Account in Federal Hospital Insurance Trust Fund. The Health Care Fraud and Abuse Control Account would be established as an expenditure account within the Federal Hospital Insurance Trust Fund. Monies derived from the coordinated health care anti-fraud and abuse program from imposition of civil money penalties, fines, forfeitures and damages assessed in criminal, civil or administrative health care cases, along with any gifts or bequests would be transferred into the Medicare HI trust fund. There are also appropriated from the HI trust fund to the Account such sums as the Secretary and the Attorney General certify are necessary to carry out certain functions, subject to specified limits for each of fiscal years 1996 through 2002. These functions include prosecuting health care matters, investigations, audits of health care programs and operations, inspections and other evaluations, and provider and consumer education regarding compliance with fraud and abuse provisions. Amounts in the Account would also be available to the various State Medicaid fraud control units to reimburse such units for the costs of certain activities. The Secretary and the Attorney General are required to submit a joint annual report to Congress on the revenues and expenditures, and the justification for such disbursements of the Health Care Fraud and Abuse Control Account.

Conference agreement

a. Establishment of Medicare Integrity Program. The conference agreement includes the House provision with clarifications to the conflict of interest requirements for eligible entities and the competitive bidding procedures.

b. Fraud and Abuse Control Program. The conference agreement includes the Senate provision with modifications. The fraud and abuse control program coordinates Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans. The funding mechanism for the Federal Bureau of

Investigations authorizes appropriations for the FBI from general revenues.

7. PERMITTING CARRIERS TO CARRY OUT PRIOR AUTHORIZATION FOR CERTAIN ITEMS OF DURABLE MEDICAL EQUIPMENT (DME) (SEC. 15107 OF HOUSE BILL)

Current law

The Secretary is authorized to develop and periodically update a list of DME items that are subject to unnecessary utilization throughout a carrier's entire service area or a portion of such area. The Secretary may also develop and update a list of DME suppliers with a substantial number of denied claims or a pattern of overutilization resulting from the business practices of suppliers. Carriers are required to make advance coverage determinations for items on the lists developed by the Secretary.

House bill

a. In General. Carriers would be authorized to develop the same lists of DME items and suppliers that the Secretary is authorized to develop. Carriers would also be authorized to make advance coverage determinations, regardless of whether or not the Secretary has promulgated a regulation for the list, except that carriers could not make such advance determinations with respect to an item or supplier on a list until the expiration of the 30-day period beginning on the date the Secretary or carrier places the item on the list.

b. Effective Date. This amendment would take effect as if included in the enactment of the Social Security Act Amendments of 1994.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision as part of the Medicare Integrity Program.

8. NATIONAL HEALTH CARE ANTI-FRAUD TASK FORCE (SEC. 15108 OF HOUSE BILL; SEC. 7101 OF SENATE BILL)

Current law

No provision.

House bill

Within 120 days of enactment of this bill the Attorney General, in consultation with the Secretary of HHS, would establish, within the Department of Justice, a nation-wide Health Care Anti-Fraud Task Force to prosecute health care fraud offenses. This Task Force would be composed of representatives of Federal agencies which prosecute health care fraud and abuse, including the Department of Justice, the FBI, the Department of Health and Human Services and its Office of Inspector General, the Department of Defense, the Department of Veterans Affairs, the U.S. Postal Service and the IRS. The Task Force would coordinate Federal law enforcement activities relating to health care fraud and abuse in order to better control fraud and abuse in the delivery of health care in the United States.

Senate bill

See Senate bill summary, item 6(b), above.

Conference agreement

The conference agreement does not include the House provision. The conference agreement (see item 6(b), above) includes the Senate provision.

9. STUDY OF ADEQUACY OF PRIVATE QUALITY ASSURANCE PROGRAMS (SEC. 15109 OF HOUSE BILL)

Current law

No provision.

House bill

The Administrator of the Health Care Financing Administration, through the Office of Research, would be required to contract for a study of the adequacy of quality assurance programs and consumer protections used by plans enrolling Medicare beneficiaries under part C of title XVIII of the Social Security Act, including an analysis of the effectiveness of such programs in protecting plan enrollees against the risk of insufficient provision of benefits which may result from utilization controls. A report would be submitted to Congress on the study not later than 6 months after the conclusion of the 5-year period for the study.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

10. PENALTY FOR FALSE CERTIFICATION FOR HOME HEALTH SERVICES (SEC. 15110 OF HOUSE BILL)

Current law

No provision.

House bill

a. In General. This provision would add an additional civil monetary penalty of not more than three times the amount of the payments, or $5,000, whichever is greater, for a physician who certifies that an individual meets all of Medicare's requirements to receive home health care while knowing that the individual does not meet all such requirements.

b. Effective Date. The amendment made by this section would apply to certifications made on or after the date of enactment of this Act.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

11. PILOT PROJECTS (SEC. 15111 OF HOUSE BILL)

Current law

No provision.

House bill

The Secretary of HHS would establish and operate five pilot projects in various parts of the country implementing innovative approaches to monitor Medicare program payment claims to detect claims that are wasteful or fraudulent.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

12. ELIMINATION OF REASONABLE COST REIMBURSEMENT FOR CERTAIN LEGAL FEES. (SECTION 7122 OF SENATE BILL)

Current law

The determination of reasonable costs under the Medicare program do not include the costs incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination of an individual's entitlement to benefits under part A or part B, or the amount of such benefits, or certain other allowable grounds for appeal under Sec. 1869(b) of the Social Security Act.

House bill

No provision.

Senate bill

This provision would also disallow the costs incurred by a provider of services in representing a beneficiary in an unsuccessful appeal of a determination of entitlement to benefits under part A or part B, and in an appeal of an unsuccessful determination of the amount of benefits under part A or part B, and in any other appeal of a determination with respect to a claim for benefits under part A or a claim for benefits with respect to home health services under part B under Section 1869(a) of the Social Security Act.

Conference agreement

The conference agreement does not include the Senate provision.

PART 2—REVISIONS TO CRIMINAL LAW

1. DEFINITION OF HEALTH CARE FRAUD OFFENSE. (SEC. 15121 OF HOUSE BILL; SEC. 7142(a) OF THE SENATE BILL)

Current law

No provision.

House bill

This section sets forth a series of offenses against the federal government or private entities that would be considered as federal health care offenses when they relate to health care. These include (1) a violation of, or criminal conspiracy to violate section 226, 227, 669, 1035, 1347, or 1518 of title 18; (2) a violation of, or criminal conspiracy to violate section 1128B of the Social Security Act; (3) a violation of, or criminal conspiracy to violate section 201, 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 of this title, if the violation or conspiracy relates to a health care benefit program; (4) a violation of, or criminal conspiracy to violate section 501 or 511 of the Employee Retirement Income Security Act of 1974, if the violation or conspiracy relates to a health care benefit program; (5) the commission of, or attempt to commit, an act which constitutes grounds for the imposition of a penalty under section 303 of the Federal Food, Drug, and Cosmetic Act, if the act or attempt relates to a health care benefit program; or (6) a violation of, or criminal conspiracy to violate, section 3 of the Anti-Kickback Act of 1986, if the violation or conspiracy relates to a health care benefit program.

Senate bill

This section sets forth those offenses that will be considered as "Federal Health Care Offenses" under this subtitle. These include a violation of, or a criminal conspiracy to violate—(i) section 1347 of title 18; (ii) section 1128B of the Social Security Act; and (iii) sections 287, 371, 664, 666, 669, 1001, 1027, 1341, 1343, 1920, or 1954 of title 18, if the violation or conspiracy relates to health care fraud.

Conference agreement

The conference agreement includes the Senate provision.

2. HEALTH CARE FRAUD (SEC. 15122 OF HOUSE BILL; SEC. 7141 OF SENATE BILL)

Current law

Depending on the facts of a particular case, criminal penalties may be imposed on persons engaged in health care fraud under federal mail and wire fraud statutes, the False Claims Act, false statement statutes, money laundering statutes, racketeering, and other related laws.

House bill

Criminal penalties would be imposed for devising, committing, or attempting a scheme (1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, money or property owned by, or under the custody or control of, any health care benefit program. A "health care benefit program" is defined to include 1) any public or private plan or contract under which any medical benefit, item, or service is provided to any individual, and 2) includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract. Penalties include fines and up to 10 years imprisonment. If the violation results in serious bodily injury, the person may be imprisoned up to 20 years. If the violation results in death, the person may be imprisoned for life.

Senate bill

Criminal penalties would be imposed for knowingly and willfully executing a scheme, or artifice, or attempting to execute a scheme or artifice to defraud any "health plan" or any other person in connection with the payment or delivery of health care benefits, items or services. Penalties may also be imposed for obtaining money or property owned or under the custody or control of a health plan through false or fraudulent pretenses, representations or promises. Persons who violate the above provisions may be subjected to up to ten years in prison or applicable fines. If the violation results in serious bodily injury, the person may be imprisoned for any term of years. An amount equal to the criminal fines imposed by this section shall be deposited in the Federal Hospital Insurance Trust Fund.

The term "health plan" means a plan or program that provides health benefits through insurance or otherwise. Such plans include health insurance policies, contracts of service benefit organizations, and membership agreements with health maintenance organizations or other prepaid health plans. Later provisions under this subtitle generally provide protections to a "health plan" or person against fraud, theft, embezzlement, bribery, graft.

Conference agreement

The conference agreement includes the Senate provision, with a modification to cover only those offenses involving federal health care programs.

3. THEFT OR EMBEZZLEMENT (SEC. 15123 OF HOUSE BILL; SEC. 7147 OF SENATE BILL)

Current law

No provision.

House bill

Criminal penalties would be imposed for willfully embezzling, stealing, converting or intentionally misapplying the moneys, funds, securities, premiums, credits, property, or other assets of a "health care benefits program" to the use of any person other than the rightful owner. Violations of this section may include a fine under Title 18 and imprisonment not more than 10 years, or both.

Senate bill

Criminal penalties would be imposed for willfully embezzling, stealing, converting, or misapplying any of the moneys, funds, securities, premiums, credits, property, or other assets of a "health plan." A person convicted under this provision will be subject to a fine under title 18 of the United States Code, or imprisoned not more than 10 years, or both.

Conference agreement

The conference agreement includes the Senate provision, with a modification to cover only those offenses involving federal health care programs.

4. FALSE STATEMENTS (SEC. 15124 OF HOUSE BILL; SEC. 7145 OF SENATE BILL)

Current law

The Federal false statements provision at 18 U.S.C. § 1001 generally prohibits false statements with regard to any matter within the jurisdiction of a Federal department or agency.

House bill

Criminal penalties would be imposed for knowingly and willfully falsifying, concealing, or covering up by any trick, scheme, or device a material fact, or making false, fictitious, or fraudulent statements or representation, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry in any matter involving a health care benefit program. A person convicted under this provision may be punished by the imposition of fines under title 18 of the United States Code, or by imprisonment of not more than 5 years, or both. "Health care benefit program" shall have the meaning as set forth in § 15121.

Senate bill

Criminal penalties would be imposed for knowingly and willfully falsifying, concealing, or covering up by any trick, scheme, or device a material fact, or making false, fictitious, or fraudulent statements or representation, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry in any matter concerning a health plan. A person convicted under this provision may be punished by the imposition of fines under title 18 of the United States Code, or by imprisonment of not more than 5 years, or both.

Conference agreement

The conference agreement includes the Senate provision with a clarification that false statements or writings must be "material" and must be related to a federal health care program.

5. BRIBERY AND GRAFT (SEC. 15125 OF HOUSE BILL)

Current law

No provision.

House bill

Criminal penalties may be applied to a person who "corruptly" gives, offers, or promises anything of value to any person in order to influence a health care official's actions relating to a health care benefit program; to influence such an official to commit a fraud on a health care benefit program; or to induce such an official to engage in any conduct in violation of their lawful duty. The section also penalizes a health care official who corruptly demands or accepts anything of value for the above purposes. A health care official is an administrator, officer, trustee, fiduciary, custodian, counsel, agent, or employee of any health care benefit program; an officer, counsel, agent, or employee, of an organization that provides services under contract to any health care benefit program; or an official, employee, or agent of an entity having regulatory authority over any health care benefit program. Penalties include fines under title 18 or imprisonment for not more than 15 years, or both.

This section also provides that anyone who directly or indirectly gives, offers, or promises anything of value to a health care official (otherwise than as provided by law) "for or because" of any of the health care official's actions, decisions, or duties relating to a health care benefit program, or attempts to violate this subsection; or (2) being a health care official, directly or indirectly, demands, seeks, receives, accepts or agrees to accept anything of value the giving of which violates the above, would be fined under title 18, or imprisoned not more than 2 years, or both.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

6. ILLEGAL REMUNERATION WITH RESPECT TO HEALTH CARE BENEFIT PROGRAMS (SEC. 15126 OF HOUSE BILL; SEC. 7102 OF SENATE BILL)

Current law

No provision.

House bill

This section would transfer the anti-kickback provisions from § 1128B of the Social Security Act to title 18, and would expand the statute to all health care benefit programs, rather than just Medicare and Medicaid. It specifically provides criminal penalties for a person who knowingly and willfully receives or pays any remuneration (including any kickback, bribe, or rebate) in return for referrals covered by a health care benefit program; or in return for purchasing, leasing, ordering, or arranging for any service or item for which payment may be made in whole or in part by any health care benefit program, or attempting to do so, shall be fined under this title or imprisoned for not more than 5 years, or both. Any person injured in his business or property by reason of a violation of this section may sue and recover treble damages.

This would not apply to (1) a discount or other reduction in price obtained by a provider of services if the reduction in price is reflected in the costs charges made by the provider; (2) any amount paid by a bona-fide employee; (3) any amount paid by a vendor of goods or services to a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under a health care benefit program if—(A) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a percentage of the value of the purchases made by each such individual or entity under the contract, and (B) in the case of an entity that is a provider of services (as defined in section 1861(u) of the Social Security Act, the person discloses to the entity and, upon request, to the Secretary the amount received from each such vendor; (4) a waiver of any coinsurance under part B of Medicare by a federally qualified health care center; (5) any payment practice specified by the Secretary of HHS pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987.

Senate bill

This section extends the existing Anti-Kickback statute found in § 1128B of the Social Security Act to all federal health care programs, rather than just Medicare and Medicaid.

Conference agreement

The conference agreement includes the Senate provision.

7. OBSTRUCTION OF CRIMINAL INVESTIGATIONS OF HEALTH CARE OFFENSES (SEC. 15127 OF HOUSE BILL; SEC. 7146 OF SENATE BILL)

Current law

Criminal penalties are imposed for obstructing, delaying or preventing the communication of information to law enforcement officials regarding the violation of criminal statutes by using bribery, intimidation, threats, corrupt persuasion or harassment.

House bill

Criminal penalties would be imposed for willfully preventing, obstructing, misleading, delaying or attempting to prevent, obstruct, mislead or delay the communication of information or records relating to a health care offense to a criminal investigator. A person convicted under this provision may be punished by the imposition of fines under title 18 of the United States Code, or by imprisonment of not more than 5 years, or both. Health care offenses would have the same meaning given such term in § 15121. A criminal investigator would mean any individual duly authorized by a department, agency or armed force of the United States to conduct or engage investigations for prosecutions for violations of health care offenses.

Senate bill

Criminal penalties would be imposed for willfully preventing, obstructing, misleading, delaying or attempting to prevent, obstruct, mislead or delay the communication of information or records relating to a Federal health care offense to a criminal investigator. A person convicted under this provision may be punished by the imposition of fines under title 18 of the United States Code, or by imprisonment of not more than 5 years, or both. Federal health care offenses would have the same meaning given such term in § 7142 of the Act, and criminal investigator would mean any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage investigations for prosecutions for violations of health care offenses.

Conference agreement

The conference agreement includes the Senate provision.

8. CIVIL PENALTIES FOR VIOLATIONS OF FEDERAL HEALTH CARE OFFENSES (SEC. 15128)

Current law

No provision.

House bill

A civil penalty may be sought by the Attorney General against any person who engages in conduct constituting a violation of Federal health care offense (as defined in § 15121), and would be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation or proceeds which the person received or offered for the prohibited conduct, whichever amount is greater.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

9. INJUNCTIVE RELIEF RELATING TO HEALTH CARE OFFENSES (SEC. 15129 OF HOUSE BILL; SEC. 7143 OF SENATE BILL)

Current law

Depending on the facts of a particular case, injunctive relief may be imposed on persons who are committing or about to commit health care fraud under federal racketeering statutes and other related laws.

House bill

If a person is violating or about to commit a Federal health care offense, the Attorney General of the United States may commence a civil action in any Federal court to enjoin such a violation.

Senate bill

If a person is violating or about to commit a Federal health care offense, the Attorney General of the United States may commence a civil action in any Federal court to enjoin such a violation. If a person is alienating or disposing of property or intends to alienate or dispose of property obtained as a result of a Federal health care offense, the Attorney General may seek to enjoin such alienation or disposition, or may seek a restraining order to prohibit the person from withdrawing, transferring, removing, dissipating or disposing of any such property or property of equivalent value and appoint a temporary receiver to administer such restraining order.

Conference agreement

The conference agreement includes the Senate provision.

10. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES (SEC. 15130 OF HOUSE BILL; SEC. 7149 OF SENATE BILL)

Current law

No provision.

House bill

This section would provide procedures for the Attorney General to make investigative demands in cases regarding Federal health care offenses. The Attorney General could issue a summons for witnesses or records, although a witness shall not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpoena. Administrative summons are authorized for investigations of Federal health care offenses or of any investigation with respect to concealing escaped prisoners, flight to avoid prosecution or testimony, or fleeing after conviction of such offenses. This section would also provide for service of a subpoena and enforcement of a subpoena in all United States courts, as well as grants of immunity to persons responding to a subpoena from civil liability for disclosure of such information.

Senate bill

This section would provide procedures for the Attorney General to make investigative demands in cases regarding health care fraud. Under this section, the Attorney General could issue a summons for records and/or a witness to authenticate the records, although a witness would not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpoena. Administrative summons are authorized for investigations of any scheme to defraud any health plan or other person in connection with the delivery of or payment for health care; or to fraudulently obtain money or property of a health plan or person in connection with the delivery of or health care. This section would provide for service of a subpoena and enforcement of a subpoena in all United States curtseys well as a grant of immunity to persons responding to a subpoena from civil liability for disclosure of such information.

The section would also provide that health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if good cause is shown.

Conference agreement

The conference agreement includes the Senate provision, with a modification to limit applicability to matters involving federal health care programs.

11. GRAND JURY DISCLOSURE (SEC. 15131 OF HOUSE BILL; SEC. 7144 OF SENATE BILL)

Current law

Attorneys for the United States government are generally forbidden from disclosing matters occurring before the grand jury under Rule 6(e)(2) of the Federal Rules of Criminal Procedure. Exceptions to this requirement include the following: Rule 6(e)(3)(A)(I), which allows a government attorney to disclose matters occurring before a grand jury (excluding deliberations and the vote of any grand juror) to an attorney for the government for use in the performance of such attorney's duties; Rule 6(e)(3)(A)(ii), which allows similar disclosure to such government personnel as are deemed necessary to an attorney for the government to assist in the enforcement of federal criminal law; and Rule 6(e)(3)(C)(I), which allows a court to direct disclosure of grand jury proceedings in connection with or preliminary to a judicial proceeding. The Supreme Court has interpreted these exceptions narrowly, however, holding that the disclosure allowed under Rule 6(e)(3)(A)(I) and (ii) must be relevant to the criminal process which is the focus of the grand jury, and that disclosure under Rule 6(e)(3)(C)(I) will only be directed by a court under a strong showing of particularized need. *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983). Thus, a government attorney prosecuting a criminal case before a grand jury may not be able to divulge information occurring before the grand jury to a government attorney engaged in a civil investigation or proceeding on the same matters.

House bill

A person who is privy to grand jury information concerning a Federal health care offense received in the course of duty as an attorney for the Government or disclosed under Federal Rules of Criminal Procedure Rule 6(e)(3)(A)(I) may disclose such information to another attorney for the Government to use in any investigation or civil proceeding relating to health care fraud.

Senate bill

A person who is privy to grand jury information concerning a Federal health care offense received in the course of duty as an attorney for the Government or disclosed under Federal Rules of Criminal Procedure Rule 6(e)(3)(A)(I) may disclose such information to another attorney for the Government to use in any investigation or civil proceeding relating to health care fraud.

Conference agreement

The conference agreement does not include either the House or Senate provisions.

12. MISCELLANEOUS AMENDMENT TO TITLE 18, UNITED STATES CODE (SEC. 15132 OF HOUSE BILL; SEC. 7148, 7142 OF SENATE BILL)

a. Laundering of Monetary Instruments

Current law

The current Federal money laundering provision is found at 18 U.S.C. § 1956(c)(7), but does not include money laundering as related to health care fraud.

House bill

An act or activity constituting a Federal health care offense would be considered a "specified unlawful activity" for purposes of the prohibition on money laundering, so that any person who engages in money laundering in connection with a Federal health care offense would be subject to existing criminal penalties.

Senate bill

An act or activity constituting a Federal health care offense would be considered a "specified unlawful activity" for purposes of the prohibition on money laundering, so that any person who engages in money laundering in connection with a Federal health care offense would be subject to existing criminal penalties.

Conference agreement

The conference agreement includes the Senate provision.

b. Enhanced Penalties (Telemarketing)

Current law

18 U.S.C. § 2325 provides for enhanced penalties for offense occurring during a telemarketing scheme. The present law does not apply specifically to Federal Health Care offense.

House bill

This section would provide that a person convicted of a Federal Health Care offense which occurred in the course of a telemarketing scheme which targeted persons over fifty-five, or which victimized ten or more persons over 55, may be imprisoned up to an additional ten years.

Senate bill

No provision.

Conference Agreement

The conference agreement does not include the House provision.

c. Authorization for Interception of Wire, Oral, or Electronic Communication

Current law

18 U.S.C. § 2516 sets forth the federal statutes for which authorization to place a wire-tap may be sought from the courts. Federal Health Care offenses are not specifically included in this list.

House bill

This section would establish a court's authority to approve an application for a wiretap to be placed in order to gather evidence related to a Federal Health Care Offense, as defined in § 15121.

Senate bill

No provision.

Conference Agreement

The conference agreement does not include the House provision.

d. Definitions (RICO)

Current law

A RICO violation may be summarized as follows: whoever participates in a commercial "enterprise" or an "enterprise" which has an impact on commerce through a pattern of specific criminal "racketeering" activity can be found to be in violation of RICO. Typical "racketeering" activity includes murder, kidnapping, robbery, arson, bribery, loan-sharking, mail fraud, wire fraud, obstruction of justice, witness retaliation, or extortion. Federal Health Care Offenses are not specifically listed as a "racketeering activity."

House bill

This section would establish a Federal Health Care Offense as a predicate offense for purposes of establishing a pattern of "racketeering activity" under RICO.

Senate bill

No provision.

Conference agreement

The conference provision does not include the House provision.

e. Criminal Forfeiture

Current law

Depending on the facts of a particular case, criminal forfeiture may be imposed on persons convicted under federal money laundering statutes, racketeering statutes, and other related laws.

House bill

A court imposing a sentence on a person convicted of a Federal health care offense would order the person to forfeit all real or personal property that is derived, directly or indirectly, from proceeds traceable to the commission of the offense.

Senate bill

A court imposing a sentence on a person convicted of a Federal health care offense would order the person to forfeit all real or personal property that is derived, directly or indirectly, from proceeds traceable to the commission of the offense. After payment of the costs of asset forfeiture have been made, the Secretary of the Treasury would deposit into the Federal Hospital Insurance Trust

Fund an amount equal to the net amount realized from the forfeiture of property by reason of a federal health care offense.

Conference agreement

The conference agreement includes the Senate provision.

13. STATE HEALTH CARE FRAUD CONTROL UNITS (SEC. 7151 OF SENATE BILL)

Current Law

State Medicaid Fraud Control Units are presently authorized under the Medicaid program and are certified annually by the Secretary if they meet certain requirements. Such units must be a unit of State government with either (a) statewide authority to investigate and prosecute individuals for criminal violations of State laws regarding fraud in the provision of medical assistance under the Medicaid program, or (b) have formal procedures providing effective coordination with the activities of the State Attorney General's office or other office with prosecutive authority. State Medicaid Control Units must also have procedures for reviewing complaints of abuse and neglect of patients of health care facilities receiving Medicaid payments and, where appropriate, acting on such complaints or referring them for action.

House bill

No provision.

Senate bill

a. Extension of Concurrent Authority to Investigate and Prosecute Fraud in Other Federal Programs. This section changes the State Medicaid Fraud Control Unit authorization language to specify that those units will have concurrent authority to investigate and prosecute health care fraud in other Federal programs at the approval of the relevant Federal agency.

b Extension of Authority to Investigate and Prosecute Patient Abuse in Non-Medicaid Board and Care Facilities. States have the option, under this section, to establish procedures for reviewing complaints of abuse or neglect of patients residing in board and care facilities and, where appropriate, acting on such complaints or referring them for action. "Board and care facility" is defined as a residential setting which receives payment from or on behalf of two or more unrelated adults who reside in such facility, and for whom either nursing care services are provided, or personal care services are provided, or both.

Conference agreement

The conference agreement includes the Senate provision with a clarification that concurrent authority of Medicaid Fraud Control Units to investigate and prosecute health care fraud requires approval of the chief executive officer of the State or such officer's designee, as well as of the relevant Federal agency.

SUBTITLE C—REGULATORY RELIEF

A. PHYSICIAN OWNERSHIP AND REFERRAL REFORM

1. REPEAL OF PROHIBITIONS BASED ON COMPENSATION ARRANGEMENTS (SEC. 15201 OF HOUSE BILL)

Current law

The law establishes a ban on certain financial arrangements between a referring physician and an entity. Specifically, if a physician (or immediate family member) has an ownership or investment interest in or a compensation arrangement with an entity, the physician is prohibited from making a referral to the entity for services for which Medicare would otherwise pay. Further, the entity may not bill for such services. For purposes of the ban, an ownership or investment interest may be through equity or debt or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing designated health services. A compensation arrangement is generally defined as any arrangement involving any remuneration between a physician (or immediate family member) and an entity.

The law includes general exceptions to the ban. Some are general exceptions to both the ownership and compensation arrangement prohibitions, while others relate only to ownership or only to compensation arrangements.

House bill

The provision would repeal the prohibitions based on compensation arrangements.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

2. REVISION OF DESIGNATED HEALTH SERVICES SUBJECT TO PROHIBITION (SEC. 15202 OF HOUSE BILL)

Current law

OBRA 89, which established the initial self-referral ban applied the ban to referrals for clinical laboratory services only. OBRA 93 (as modified by P.L. 103–432) extended the ban to additional “designated health services”, effective January 1, 1995. These designated health services are: (i) physical therapy services; (ii) occupational therapy services; (iii) radiology, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services; (iv) radiation therapy services and supplies; (v) durable medical equipment and supplies; (vi) parenteral and enteral nutrients, equipment and supplies; (vii) prosthetics, orthotics, and prosthetic devices; (viii) home health services and supplies; (ix) outpatient prescription drugs; and (x) inpatient and outpatient hospital services.

House bill

The provision revises the list of "designated health services". Under the provision, the referral ban would apply only to: (i) clinical laboratory services, (ii) parenteral and enteral nutrients, equipment and supplies; (iii) magnetic resonance imaging and computerized tomography services; and (iv) outpatient physical or occupational therapy services.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision with an amendment modifying the description of item (iii) to read "radiology services, including magnetic resonance imaging, computerized tomography, and ultrasound services."

3. DELAY IN IMPLEMENTATION UNTIL PROMULGATION OF REGULATIONS (SEC. 15203 OF HOUSE BILL)

Current law

The self-referral provisions included in OBRA 89 applied to Medicare referrals for clinical laboratory services made on or after January 1, 1992. OBRA 93 expanded the referral ban to a list of "designated health services" and extended the prohibition to Medicaid. OBRA 93 also included significant revisions to the OBRA 89 provisions. In general, the amendments made by OBRA 93 (as amended by P.L. 103–432) apply with respect to referrals made on or after January 1, 1995; however some provisions had a retroactive effective date of January 1, 1992.

On August 14, 1995, DHHS issued final regulations implementing the OBRA 89 requirements. These regulations are effective September 13, 1995. DHHS noted that these regulations relate only to referrals for clinical laboratory services and address only those provisions that had an effective date, including a retroactive effective date, of January 1, 1992.

House bill

The proposal specifies that the amendments made by OBRA 93 would not apply to any referrals made before the effective date of the final implementing regulations promulgated by the Secretary of DHHS.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

4. EXCEPTION TO PROHIBITIONS (SEC. 15204 OF HOUSE BILL)

Current law

a. In-Office Ancillary Services. The law includes general exceptions to the self-referral ban. Some are general exceptions to both the ownership and compensation arrangement prohibitions, while others relate only to ownership or only to compensation arrangements.

A general exception applies to in-office ancillary services which are defined as furnished by the physician making the referral, another physician in the same group practice, or personally by individuals directly supervised by the physician or another physician in the same group practice.

The in-office ancillary services exception contains a site-of-service requirement. To meet the exception, the services must be furnished in: (i) a building in which the referring physician or other member of the group practice provides services unrelated to the furnishing of designated health services; or (ii) in a building used for the centralized provision of the group's designated health services. OBRA 93 specified that for clinical laboratory services only, the exception only applies if the services are provided in a centralized location.

b. Rural Providers. The law includes an exception, related only to the ownership and investment prohibition, for rural providers. To be eligible for an exception, the entity must be in a rural area. Further, the exception only applies if substantially all of the designated health services furnished by the entity are furnished to individuals residing in rural areas.

c. Prepaid Health Plans. The law includes a general exception for services provided by a prepaid health plan to enrollees. The definition of prepaid plans includes those either meeting Medicare requirements, operating as prepaid plans under a Medicare demonstration project, or meeting the requirements of a federally-qualified health maintenance organization.

d. Exceptions for Other Entities. No provision.

House bill

a. In-Office Ancillary Services. The provision would modify the exception for in-office ancillary services. It would repeal the site-of-service requirement. It would also provide that non-physician personnel must be under the general supervision (rather than the direct supervision) of a physician. An individual would be under the general supervision of a physician (or a group practice of which the physician is a member) if the physician is legally responsible for the services performed by the individual and for ensuring the individual meets licensure and certification requirements regardless of whether or not the physician is physically present when the services are delivered.

b. Rural Providers. The provision would modify the provision relating to rural providers. To qualify for an exception, not less than 75 percent of the designated health services must be furnished to individuals residing in rural areas.

c. Prepaid Plans. The provision would modify the definition of prepaid plans to refer to managed care plans. It would expand the definition to include HMOs which have a contract under MedicarePlus or which have a contract with the State to provide Medicaid services. It would add an exception for other entities under the following conditions. The entity must provide for or arrange for the provision of services pursuant to a written agreement between the organization and an individual or entity. The agreement must place the individual or entity at substantial financial risk for the cost or utilization of services which the individual or entity is obligated to provide. This obligation may be through withhold, capitation, incentive pool, per diem payment, or any other similar risk arrangement which places the individual or entity at substantial financial risk.

d. Exceptions for Other Entities. The provision would add a new exception for shared facility services. The services must be furnished by the facility to patients of shared facility physicians; the physicians must have a financial relationship under a shared facility arrangement with the facility. A shared facility arrangement is one: (i) which is only between physicians who are providing services (unrelated to shared facility services) in the same building; (ii) in which the overhead expenses are shared among the physicians in accordance with previously determined methods; and (iii) which, in the case of a corporation, is wholly owned and controlled by shared facility physicians.

The provision would add a new exception for services furnished in communities which the Secretary of DHHS determines do not have access to alternative providers.

The provision would add an exception for services furnished in ambulatory surgical centers, renal dialysis facilities, comprehensive outpatient rehabilitation facilities, and hospice programs.

Senate bill

a. In-Office Ancillary Services. No provision.
b. Rural Providers. No provision.
c. Prepaid Health Plans. No provision.
d. Exceptions for Other Entities. No provision.

Conference agreement

a. In-Office Ancillary Services. The conference agreement includes the House provision.

b. Rural Providers. The conference agreement includes the House provision.

c. Prepaid Health Plans. The conference agreement includes the House provision.

d. Exceptions for Other Entities. The conference agreement includes the House provision.

5. REPEAL OF REPORTING REQUIREMENTS (SEC. 15205 OF HOUSE BILL)

Current law

The law establishes a reporting requirement for entities providing services under Medicare. Reports are to include information on the entity's ownership, investment and compensation arrangements.

House bill

The provision would delete the reporting requirements.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

6. PREEMPTION OF STATE LAW (SEC. 15206 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would specify that the self-referral provisions preempt State law to the extent State law was inconsistent.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

7. EFFECTIVE DATE (SEC. 15207 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would apply to referrals made on or after August 14, 1995, regardless of whether or not regulations are promulgated to carry out such amendments. The provision delaying the applicability of the effective date of OBRA 93 changes until issuance of regulations would be effective as if included in OBRA 93.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision modified to revise the effective date to "upon enactment."

B. OTHER MEDICARE REGULATORY RELIEF

1. REPEAL OF MEDICARE AND MEDICAID COVERAGE DATA BANK (SEC. 15211 OF HOUSE BILL)

Current law

Under the Medicare secondary payer (MSP) program, the individual's employer-based group health insurance, liability insurance, or no-fault insurance may be the primary payer in certain cases. The OBRA 93 provided for the establishment of a Medicare and Medicaid Coverage Data Bank by the Secretary of DHHS. OBRA 93 required employers having or contributing to a group health insurance plan to submit employee health insurance information to the Secretary, on an annual basis, for calendar years 1994–1997. The 1994 submission was due by February 1995. The information was intended to facilitate the identification of both Medicare secondary payer cases and those circumstances in which employer-based insurance, rather than Medicaid, should be the primary payer.

A number of employers voiced strong opposition to the Data Bank requirements. One of the principal concerns was that employers would be required to report information which they did not routinely collect. In response to these concerns, the Conference agreement accompanying the FY 1995 Labor, DHHS, and Education appropriations bill (P.L.103–333) contained specific language relating to the Data Bank. It directed that no DHHS funds should be used for the implementation of or planning for implementation of the Bank.

House bill

The provision would repeal the Data Bank requirement.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

2. CLARIFICATION OF LEVEL OF KNOWLEDGE REQUIRED FOR IMPOSITION OF CIVIL MONETARY PENALTIES (SEC. 15212(A) OF HOUSE BILL)

Current law

Civil money penalties may be imposed for seeking reimbursement under the Medicare and Medicaid programs for items or services not provided or for services provided by someone who was not a licensed physician, whose license was obtained through misrepresentation, or who misrepresented his or her qualification as a specialist, or where the claim is otherwise fraudulent. Civil penalties may also be sought for presenting a claim for payments which are in violation of: 1) contracts limiting payment due to assignment of a patient, 2) agreements with state agencies limiting permitted charges, 3) agreement with participating physicians or suppliers, and 4) agreements with providers of service. Civil penalties may also be sought against persons who provide false or misleading information that could reasonably be expected to influence a decision to discharge a person from a hospital. A person is subject to these provisions if they presented a claim and he or she "knows or should have known" that the claim fell into one of the categories listed above.

House bill

This section adds a requirement, similar to the False Claims Act, that a person is subject to this provision when the person "knowingly" presents a claim that the person "knows or should know" fell into one of the prohibited categories. Thus, an assessment under this provision would only be made where a person had actual knowledge that he or she had submitted a claim or had provided false or misleading information, and where the person had actual knowledge of the fraudulent nature of the claim, acted in deliberate ignorance, or acted in reckless disregard. The requirement that a person "knowingly" presents a claim or "knowingly" makes a false or misleading statement which influences discharge would prevent charging persons who inadvertently perform these acts.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

3. CLARIFICATION OF EFFECT AND APPLICATION OF SAFE HARBOR EXCEPTIONS (SECTION 15212(B) OF HOUSE BILL)

Current law

The Medicare and Medicaid anti-kickback provisions generally prohibit anyone from providing or offering to provide remuneration in cash or in kind in return for a patient referral whose treatment is paid for in whole or in part by Medicare or Medicaid. The provisions in section 1128B(b) of the Social Security Act also prohibit the solicitation or receipt of such remuneration and arranging or recommending a referral for remuneration. Violations are felonies and are subject to a fine of up to $25,000 or imprisonment for up to five years, or both. Certain business practices are exempted from the application of these provisions and the DHHS Office of Inspector General is directed to issue safe harbor regulations for additional payment practices that would not be subject to criminal prosecution or provide a basis for exclusion from participation in Medicare and Medicaid. If an individual or entity engages in a business arrangement which is the subject of a safe harbor provision and complies with all of the applicable requirements of the provision that individual or entity will be assured that he or she will not be prosecuted.

House bill

This section provides that the specification of any payment practice by the Secretary under this provision is to be solely for the purpose of adding additional exceptions to the types of conduct, and are not for the purpose of limiting the scope of such exceptions. In addition, an acceptable payment practice shall apply notwithstanding the intent of the party engaging in that practice.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

4. LIMITING IMPOSITION OF ANTI-KICKBACK PENALTIES TO ACTIONS WITH SIGNIFICANT PURPOSE TO INDUCE REFERRALS (SEC. 15212(C) OF HOUSE BILL)

Current law

The anti-kickback provisions in Section 1128B(b) prescribe criminal penalties for individuals or entities who knowingly and willfully offer or pay remuneration to induce business reimbursed under Medicare or State health care programs.

House bill

This section would amend Section 1128B(b)(2) to provide that person was subject to the anti-kickback provisions only if the remuneration which is offered is done so "for the significant purpose of inducing" business which would be reimbursed under Medicare or State health care programs. This would narrow the application of the anti-kickback provisions to only those situations where inducement was a significant purpose of remuneration.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

5. CLARIFICATION OF AND ADDITIONS TO EXCEPTIONS TO ANTI-KICKBACK PENALTIES (SEC. 15213 OF HOUSE BILL; SEC. 7116 OF SENATE BILL)

Current law

The anti-kickback provisions in Section 1128B(b) contain several exceptions. These exceptions include discounts or other reductions in price obtained by a provider of services or other entity under Medicare or a State health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under Medicare or a State health care program; any amount paid by an employer to an employee for employment in the provision of covered items or services; any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities under specified conditions; a waiver of any coinsurance under Part B of Medicare by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act; and any payment practice specified by the Secretary as a Safe Harbor exception.

House bill

This section would add new exception to the anti-kickback provisions allowing remuneration between a MedicarePlus organization under part C of Title XVIII and an individual or entity providing services pursuant to a written agreement between the MedicarePlus organization and the individual or entity. Remuneration would also be allowed between an organization and an individual or entity if a written agreement places the individual or entity at substantial financial risk for the cost or utilization of the items or services which the individual or entity is obligated to provide. The risk arrangement may be provided through a withhold, capitation, incentive pool, per diem payment or other similar risk arrangement. This amendment would apply to acts or omissions occurring after January 1, 1996.

Senate bill

The Secretary of DHHS is directed to conduct a study evaluating the benefits of discounting and other reductions in price obtained by a provider of services or other entity under Medicare or State health care programs. The study would identify mechanisms to assure that the Medicare program benefits from such discounts. The Secretary would report on the findings of the study to Congress and develop budget neutral regulations based on study's findings.

Conference agreement

The conference agreement includes the House provision with a clarification.

6. SOLICITATION AND PUBLICATION OF MODIFICATIONS TO EXISTING SAFE HARBORS AND NEW SAFE HARBORS (SEC. 15214 OF HOUSE BILL; SEC. 7103 OF SENATE BILL)

Current law

The 1987 Medicare and Medicaid Patient and Program Protection Act specified various payment practices which, although potentially capable of inducing referrals of business under Medicare or State health care programs, are protected from criminal prosecution or civil sanction under the anti-kickback provisions of the law. The 1987 law also established authority for the Secretary to promulgate regulations specifying additional payment practices, known as "safe harbors", which will not be subject to sanctions under the fraud and abuse provisions.

House bill

The Secretary would publish an annual notice in the Federal Register soliciting proposals for modifications to existing safe harbors, new safe harbors, interpretive rulings and special fraud alerts. After considering such proposals the Secretary, in consultation with the Attorney General, would, after notice and comment, issue final rules modifying existing safe harbors and establishing new safe harbors, as appropriate. The Secretary, in considering these proposals, may consider the extent to which such a proposal would affect access to health care service, quality of health care services, patient freedom of choice among health care providers, competition among health care providers, cost of health care programs to Government, over-utilization of health care services, and any other factors appropriate to prevent fraud and abuse in health care programs of the Federal Government. The Inspector General would issue an annual report on the proposals received by the Secretary, the proposals issued by the Secretary, and an explanation of the reason for rejection of any of the proposals received.

Senate bill

The Secretary would publish an annual notice in the Federal Register soliciting proposals for modifications to existing safe harbors and new safe harbors. After considering such proposals the Secretary, in consultation with the Attorney General, would issue final rules modifying existing safe harbors and establishing new safe harbors, as appropriate. The Inspector General would submit an annual report to Congress describing the proposals received, as well as the action taken regarding the proposals. The Secretary, in considering proposals, may consider a number of factors including the extent to which the proposals would affect access to health care services, quality of health care services, patient freedom of choice among health care providers, competition among health care providers, ability of health care facilities to provide services in medically underserved areas or to medically underserved populations, and the like.

The Secretary of Health and Human Services would publish the first notice in the Federal Register soliciting proposals for new or modified safe harbors no later than January 1, 1996.

Conference agreement

The conference agreement includes the Senate provision.

7. ISSUANCE OF ADVISORY OPINIONS/INTERPRETATIVE RULINGS UNDER TITLE XI (SEC. 15215 OF HOUSE BILL; SEC. 7103 OF SENATE BILL)

Current law

No provision.

House bill

The Secretary would issue regulations to provide for a procedure by which a party may seek an advisory opinion from the Secretary. These opinions would be binding, and could include matters such as what constitutes prohibited remuneration, what arrangements are excluded from these prohibitions, whether an arrangement satisfies the criteria established by the Secretary for activities which do not result in prohibited remuneration, what constitutes an inducement to reduce or limit services, and whether an activity constitutes grounds for imposition of penalties. Such opinions would not address whether the fair market value was received for goods and whether an individual is a bona fide employee for tax purposes. The Secretary would respond to advisory opinion requests within 30 days, and a fee equal to the costs incurred would be charged. The effective date of this section is January 1, 1996.

Senate bill

Interpretive rulings may be requested, at any time, by any person, and would be issued by the Inspector General, in consultation with the Attorney General, not later than 90 days after receiving such a request. Interpretive rulings would be published in the Federal Register, but would not have the force of law. If the Inspector

General does not issue an interpretive ruling, he or she would notify the requester within sixty days of the request and give the reasons for denial.

Conference agreement

The conference agreement includes the Senate provision.

8. PRIOR NOTICE OF CHANGES IN BILLING AND CLAIMS PROCESSING REQUIREMENTS FOR PHYSICIANS' SERVICES

Current Law

No provision.

House bill

The provision would require the Secretary, unless otherwise specifically provided by Congress, to give at least 120 days notice before making changes in billing and processing requirements for physicians claims.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

C. PROMOTING PHYSICIAN SELF-POLICING

1. EXEMPTION FROM ANTITRUST LAWS FOR CERTAIN ACTIVITIES OF MEDICAL SELF-REGULATORY ENTITIES (SEC. 15221 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would provide an exemption from Federal and State antitrust laws for health care service activities which are considered safe harbors under the provision. A safe harbor is generally described as any activity of a medical self-regulatory entity relating to standard setting or standard enforcement activities that are designed to promote the quality of health care services provided to patients. However, no activity of a medical self-regulatory entity could be deemed to be a safe harbor under this section if the activity was conducted for purposes of financial gain, or the activity interfered with the provision of health care services by any health care provider who was not a member of the specific profession which was subject to the authority of the medical self-regulatory entity.

For purposes of the provision, the term "antitrust laws" would have the meaning given it in subsection (a) of the first section of the Clayton Act, except that the term includes section 5 of the Federal Trade Commission Act to the extent that section applies to unfair methods of competition. A "medical self-regulating entity" would be defined as a medical society or association, a specialty board, a recognized accrediting agency, or a hospital medical staff, and includes the members, officers, employees, consultants, and volunteers or committees of such an entity. "Standard setting or standard enforcement activities" mean accreditation of health care practitioners, health care providers, medical education institutions, or medical education programs, as well as technology assessment and risk management activities, the development and implementation of practice guidelines or practice parameters, or official peer review proceedings undertaken by a hospital medical staff or a medical society for purposes of evaluating the professional conduct or quality of health care provided by a medical professional. This section also defines "health care service", "health care provider" and "health benefit plan".

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

SUBTITLE D—MEDICAL LIABILITY REFORM

A. General Provisions

1. FEDERAL REFORM OF HEALTH CARE LIABILITY ACTIONS (SEC. 15301 OF HOUSE BILL)

Current law

There are no uniform Federal standards governing health care liability actions.

House bill

The provision would provide for Federal reform of health care liability actions. It would apply to any health care liability action brought in any State or Federal court. The provisions would not apply to any action for damages arising from a vaccine-related injury or death or to the extent that the provisions of the National Vaccine Injury Compensation Program apply. The provisions would also not apply to actions under the Employment Retirement Income Security Act. The provisions would preempt State law to the extent State law provisions were inconsistent with the new requirements. However, it would not preempt State law to the extent State law provisions were more stringent.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

2. DEFINITIONS (SEC. 15302 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would define the following terms for purposes of the Federal reforms: actual damages; alternative dispute resolution system; claimant; clear and convincing evidence; collateral source payments; drug; economic loss; harm; health benefit plan; health care liability action; health care liability claim; health care provider; health care service; medical device; noneconomic damages; person; product seller; punitive damages; and State.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

3. EFFECTIVE DATE (SEC. 15303 OF HOUSE BILL)

Current Law

No provision.

House bill

The provision would specify that Federal reforms apply to any health care liability action brought in any State or Federal court that is initiated after the date of enactment. The provision would also apply to any health care liability claim subject to an alternative dispute resolution system, Any health care liability claim or action arising from an injury occurring prior to enactment would be governed by the statute of limitations in effect at the time the injury occurred.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

B. Uniform Standards for Health Care Liability Actions

1. STATUTE OF LIMITATIONS (SEC. 15311 OF HOUSE BILL)

Current law

To date reforms of the malpractice system have occurred primarily at the State level and have generally involved changes in the rules governing tort cases. (A tort case is a civil action to recover damages, other than for a breach of contract.)

House bill

The provision would establish uniform standards for health care liability claims. It would establish a uniform statute of limitations. Actions could not be brought more than two years after the injury was discovered or reasonably should have been discovered. In no event could the action be brought more than five years after the date of the alleged injury.

Senate bill

No provision.

Conference Agreement

The conference agreement does not include the House provision.

2. CALCULATION AND PAYMENT OF DAMAGES (SEC. 15312 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would limit noneconomic damages to $250,000 in a particular case. The limit would apply regardless of the number of persons against whom the action was brought or the number of actions brought.

The provision would specify that a defendant would only be liable for the amount of noneconomic damages attributable to that defendant's proportionate share of the fault or responsibility for that claimant's injury.

The provision would permit the award of punitive damages (to the extent allowed under State law) only if the claimant established by clear and convincing evidence either that the harm was the result of conduct that specifically intended to cause harm or the conduct manifested a conscious flagrant indifference to the rights or safety of others. The amount of punitive damages awarded could not exceed $250,000 or three times the amount of economic damages, whichever was greater. The determination of punitive damages would be determined by the court and not be disclosed to the jury The provision would not create a cause of action for punitive damages. Further, it would not preempt or supersede any State or Federal law to the extent that such law would further limit punitive damage awards.

The provision would permit either party to request a separate proceeding (bifurcation) on the issue of whether punitive damages should be awarded and in what amount. If a separate proceeding was requested, evidence related only to the claim of punitive damages would be inadmissible in any proceeding to determine whether actual damages should be awarded.

The provision would prohibit the award of punitive damages in a case where the drug or device was subject to premarket approval by the Food and Drug Administration, unless there was misrepresentation or fraud. A manufacturer or product seller would not be held liable for punitive damages related to adequacy of required tamper resistant packaging unless the packaging or labeling was found by clear and convincing evidence to be substantially out of compliance with the regulations.

The provision would permit the periodic (rather than lump sum) payment of future losses in excess of $50,000. The judgment of a court awarding periodic payments could not, in the absence of fraud, be reopened at any time to contest, amend, or modify the schedule or amount of payments. The provision would not preclude a lump sum settlement.

The provision would permit a defendant to introduce evidence of collateral source payments. Such payments are those which are any amounts paid or reasonably likely to be paid by health or accident insurance, disability coverage, workers compensation, or other third party sources. If such evidence was introduced, the claimant could introduce evidence of any amount paid or reasonably likely to be paid to secure the right to such collateral source payments. No provider of collateral source payments would be permitted to recover any amount against the claimant or against the claimant's recovery.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

3. ALTERNATIVE DISPUTE RESOLUTION (SEC. 15313 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would require that any alternative dispute resolution system used to resolve health care liability actions or claims must include provisions identical to those specified in the bill.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

SUBTITLE E—TEACHING HOSPITALS; GRADUATE MEDICAL EDUCATION

A. ESTABLISHMENT OF FUND; PAYMENTS TO TEACHING HOSPITALS (SEC. 15401 OF HOUSE BILL)

Current law

Medicare recognizes the costs of graduate medical education in teaching hospitals and the higher costs of providing services in those institutions. Medicare recognizes the costs of graduate medical education under two mechanisms: direct graduate medical education (GME) payments and an indirect medical education (IME) adjustment. The direct costs of approved GME programs include the salaries of residents and faculty, and other education costs for residents, nurses, and allied health professionals trained in provider-operated programs and are paid on the basis of a formula that reflects each hospital's per resident costs. The IME is designed to reimburse hospitals for indirect costs due to a variety of factors, including the extra demands placed on the hospital staff as a result of the teaching activity, greater severity of patient illness, or additional tests and procedures that may be ordered by residents.

House bill

The proposal would add a new title XXII to the Social Security Act (SSA) creating a trust fund in the Treasury known as the Teaching Hospital and Graduate Medical Education Trust Fund, which would make annual payment distributions to teaching hospitals. The Fund would consist of three accounts: the Indirect-Costs Medical Education Account, the Medicare Direct-Costs Medical Education Account, and the General Direct-Costs Medical Education Account.

Beginning in FY1997 and each subsequent year thereafter, the bill would appropriate amounts from the Treasury and allocations would be made from Medicare's Part A and B trust funds, and would be transferred into the Trust Fund for allocation to accounts within the Trust Fund. Appropriations from the Treasury would be: $1.3 billion in FY1997; $1.5 billion in FY1998; $2.3 billion in FY1999; $3.1 billion in FY2000; $3.6 billion in FY2001; and $4.00 billion in FY2002. For FY2003 and each subsequent fiscal year, the appropriation amount would be the greater of the amount appropriated for the preceding fiscal year, or the product of the amount appropriated for the preceding fiscal year and an amount equal to 1 plus the percentage increase in the nominal gross domestic product for the one-year period ending upon July 1 of the preceding fiscal year. The appropriated amounts would be allocated to the accounts by the Secretary based on the total amount of payments made under Medicare for indirect medical education (IME) and direct graduate medical education (GME) payments for FY1994, and the percentage of the total amount of payments for IME and GME.

The proposal would require that teaching hospitals submit a payment document for FY1997 and any subsequent fiscal year to the Secretary to receive a payment from the Fund equal to the sum of amounts related to IME and direct GME. The payment document would contain such information as necessary for the Secretary to make payments, and the Secretary would be permitted to require that the information be submitted by the teaching hospitals in periodic reports. The proposal would also authorize the Secretary to make payments to authorized consortia of providers.

For a teaching hospital's indirect costs, the proposal would determine an amount for a fiscal year as the product of: (1) the amount in the Indirect-Costs Medical Education Account for the applicable date, and (2) the hospital-specific percentage determined for the hospital. Once determined, the hospital-specific percentage would remain in effect for all subsequent fiscal years. The hospital-specific percentage would be the mean average of the respective percentages for the applicable period, adjusted by the Secretary on a pro rata basis to ensure that the sum of the percentages for all teaching hospitals would be equal to 100 percent. Generally, the applicable period would be fiscal years 1992–1994. The percentage determined for a teaching hospital for a fiscal year of the applicable period would be constituted by the ratio of: (1) the total amount of IME payments received by the hospital for the fiscal year involved, to (2) the sum of the respective amounts of IME payments for all teaching hospitals.

To determine the direct costs of graduate medical education for a teaching hospital for a fiscal year, the proposal would determine an amount equal to the sum of the amount determined under the General Direct-Cost Medical Education Account, and the amount determined under the Medicare Direct-Costs Medical Education Account. A teaching hospital's payment amount from the General Account would be equal to the product of: (1) the amount in the General Direct-Costs Medical Education Account, and (2) the hospital-specific percentage. A teaching hospital's hospital-specific percentage for each fiscal year of the applicable period (1992–1994), would be determined in the same manner as for IME payments, except using data on GME payments received by the hospitals.

Payment from the Medicare Direct-Costs Medical Education Account for a teaching hospital for a fiscal year would be the product of (1) the amount in the Medicare Direct-Costs Medical Education Account, and (2) the hospital-specific percentage determined for the teaching hospital. Unlike the other accounts, the hospital-specific percentage for Medicare Direct-Costs would be determined annually based on the Secretary's estimate of what the hospital would have received for the year if the Medicare rules for GME were applicable. The hospital-specific percentage would be the ratio of: (1) the estimate made by the Secretary of the GME payment amount for a teaching hospital in a fiscal year under Medicare's GME if the payments had not been discontinued; to (2) the sum of the respective estimates of GME payments for all teaching hospitals.

Special rules would be applied to teaching hospitals that consolidated or merged and to new teaching hospitals. In the case of two or more teaching hospitals consolidating or merging that had received IME and GME payments under Medicare, the applicable percentage would be the sum of the percentage that would have been determined if the consolidation or merger had not occurred. For new teaching hospitals that had not received IME and GME payments under Medicare, the Secretary would be required to estimate the appropriate hospital-specific percentage based on the amount of IME and GME payments the teaching hospital would have received under Medicare. Special rules would also be applied to teaching hospitals that first received IME or GME payments under Medicare in FY1995 and FY1996, with the hospital-specific percentages being estimated by the Secretary based on the most recent data available.

The proposal would make payments to qualifying consortium for the costs of graduate medical education. Qualifying consortium would consist of a medical residency training program of a teaching hospital and one or more of the following entities: schools of medicine or osteopathic medicine; other teaching hospitals; community health centers; medical group practices; managed care entities; entities furnishing outpatient services; and other such entities the Secretary determines to be appropriate. Payments from the accounts in the Trust Fund for consortium would equal the sum of: (1) the aggregate amount determined for the teaching hospitals of the consortium under the proposal; and (2) an amount determined using the methodology provided under the Medicare Direct-Costs Medical Education Account for consortia payments. Aggregate total payments to qualifying consortia could not exceed the sum of the aggregate total amount that would have been paid to the teaching hospitals of the consortia, and an amount equal to 1 percent of the amount in the Medicare Direct-Costs Medical Education Account.

The Secretary would be required to collect data to determine whether the estimates of Medicare's payments for the costs of IME and GME in each fiscal year were substantially accurate, and make corrective adjustments in subsequent transfers to the Trust Fund and payments to teaching hospitals.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision with modifications. The Fund would include five accounts: the General MedicarePlus Incentive Account; the General Indirect-Costs Medical Education Account; the General Direct-Costs Medical Education Account; the Medicare Indirect-Costs Medical Education Account; and the Medicare Direct-Costs Medical Education Account.

Appropriations from the Treasury into the Trust Fund would be as follows: $1.1 billion for FY1997; $1.3 billion for FY1998; $2.0 billion for FY1999; $2.6 billion for FY2000; $3.1 billion for FY2001; and $3.4 billion for FY2002. For FY2003 and each subsequent fiscal year, the appropriation amount would be the greater of the amount appropriated for the preceding fiscal year, or the product of the amount appropriated for the preceding fiscal year and an amount equal to 1 plus the percentage increase in the nominal gross domestic product for the one-year period ending upon July 1 of the preceding fiscal year. Of the appropriated amounts, the following percentage amounts would be allocated to the MedicarePlus Incentive Account: 20 percent for FY1997; 30 percent for FY1998; 40 percent for FY1999; and 50 percent for FY2000 and each subsequent year. Each teaching hospital that serves MedicarePlus patients will receive an amount from the MedicarePlus Incentive Account corresponding to it's share of total MedicarePlus patients served at all U.S. teaching hospitals. The remaining amounts would be allocated to the General Indirect-Costs Medical Education Account and the General Direct-Costs Medical Education Account, with the percentages determined by the Secretary based on: (1) the total amount of payments that were made under Medicare for IME and GME in FY1992–1994; (2) the percentage of such total constituted by payments under IME; and (3) the percentage of such total constituted by payments under GME. Formula payments for teaching hospitals for the fiscal year would be equal to the sum of: (1) the amount determined relating to the MedicarePlus program; (2) the amount determined relating to indirect costs of graduate medical education; and (3) the amount determined relating to direct costs of graduate medical education.

The Secretary would be permitted to require hospitals to submit periodic reports providing information relating to Medicare patients when teaching hospitals submit the payment document. The information would include: (1) the number of inpatient discharges attributable to individuals enrolled in the MedicarePlus program; (2) the Medicare patient load of the hospital as defined for the purposes of the Medicare direct GME payment formula; and (3) for each discharge with respect to which payment is received from the Secretary under Medicare Part A, the diagnosis-related group (DRG) within which the discharge is classified.

Qualifying consortia can receive payments for direct costs. Such consortia would consist of a teaching hospital and one or more of the following entities: schools of allopathic or osteopathic medicine; other teaching hospitals; approved medicine residency programs; Federally qualified health centers; medical group practices; managed care entities; entities furnishing outpatient services; and, such other entities as the Secretary determines to be appropriate.

B. TRANSFERS TO TEACHING HOSPITAL AND GRADUATE MEDICAL EDUCATION TRUST FUND (SEC. 15411 OF HOUSE BILL)

Current law

No provision.

House bill

The proposal would amend Medicare law by adding a new subsection (j) at the end of section 1886 of the SSA, under which the Secretary would, beginning in FY1997 transfer amounts to the Teaching Hospital and Graduate Medical Education Trust Fund. Amounts transferred to the Indirect-Costs Medical Education Account would be from the Medicare Part A trust fund on the basis of an estimate of the nationwide total of the amount that would have been paid to hospitals under Medicare's IME payment. Also, the Secretary would be required to transfer from Medicare Part A and B Trust Funds into the Medicare Direct-Costs Medical Education Account the amount estimated to be spent for teaching hospitals and consortia under Medicare's direct GME payment.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

C. MODIFICATION IN PAYMENT POLICIES REGARDING GRADUATE MEDICAL EDUCATION (SEC. 15412 OF HOUSE BILL)

Current law

1. Indirect Medical Education. Medicare makes payments to teaching hospitals under PPS for the indirect costs attributable to approved medical education programs. These indirect costs may be due to a variety of factors, including the extra demands placed on the hospital staff as a result of the teaching activity or additional tests and procedures that may be ordered by residents. Congressional reports on the PPS authorizing legislation indicated that the indirect medical education payments are also to account for factors not necessarily related to medical education which may increase costs in teaching hospitals, such as more severely ill patients, increased use of diagnostic testing, and higher staff-to-patient ratios.

The additional payment to a hospital is based on a formula that provides an increase of approximately 7.7 percent in the Federal portion of the DRG payment, for each 0.1 percent increase in the hospital's intern and resident-to-bed ratio on a curvilinear basis (i.e., the increase in the payment is less than proportional to the increase in the ratio of interns and residents to beds).

2. Direct Graduate Medical Education. The direct costs of approved graduate medical education (GME) programs (such as the salaries of residents and faculty, and other costs related to medical education programs) are excluded from PPS and are paid on the basis of a formula that reflects Medicare's share of each hospital's per resident costs. Medicare's payment to each hospital equals the hospital's costs per full-time-equivalent (FTE) resident, times the weighted average number of FTE residents, times the percentage of inpatient days attributable to Medicare Part A beneficiaries. Each hospital's per FTE resident amount is calculated using data from the hospital's cost reporting period that began in FY1984, increased by 1 percent for hospital cost reporting periods beginning July 1, 1985, and updated in subsequent cost reporting periods by the change in the CPI. OBRA 93 provided that the per resident amount would not be updated by the CPI for costs reporting periods during FY1994 and FY1995, except for primary care residents in obstetrics and gynecology. The number of FTE residents is weighted at 100 percent for residents in their initial residency period (i.e., the number of years of formal training necessary to satisfy specialty requirements for board eligibility). Residents in preventive care or geriatrics are allowed a period of up to 2 additional years in the initial residency training period. For residents not in their initial residency period, the weighing factor is 50 percent. On or after July 1, 1986, residents who are foreign medical graduates can only be counted as FTE residents if they have passed designated examinations.

House bill

1. Indirect Medical Education. The proposal would reduce the IME amount under Medicare by changing the current formula multiplier to 1.48, resulting in a 6.0 percent aggregate payment adjustment for FY1996–FY1998, with a further reduction of the multiplier to 1.38 beginning in FY1999 and for each subsequent fiscal year, which would result in a 5.6 percent aggregate payment adjustment, for every 10 percent increase in teaching intensity measured by the ratio of interns and residents per bed, and the number of discharges expected under PPS.

2. Direct Graduate Medical Education. The GME formula would be modified to limit the number of residents that could be counted by a teaching hospital. The total number of full-time-equivalent (FTE) residents in an approved residency program would be limited to the total number of residents at a hospital as of August 1, 1995, for cost reporting periods beginning on or after October 1, 1995, and on or before September 30, 2002. For hospital cost reporting periods beginning on or after October 1, 1997, the weighting factor for a resident in the initial residency period would be 1.0 FTEs, and the weighting factor for a resident who had completed the initial residency period would be 0.0 FTEs. For cost reporting periods beginning during FY1996, the FTE amount paid for medical residents who are not citizens, nationals, or permanent resident aliens of the United States, or Canadian citizens, would be reduced and ultimately eliminated by lowering the FTE weight that a hospital would be allowed to count for GME payments to: 0.75 in FY1996; 0.50 in FY1997; and 0.25 in FY1998 and for any subsequent fiscal year.

The effective date for these provisions, unless otherwise specified would, apply to hospital cost reporting periods beginning on or after October 1, 1995.

Senate bill

1. Indirect Medical Education. The proposal would reduce the IME amount under Medicare by changing the current formula multiplier to 1.65 resulting in a 6.7 percent aggregate payment adjustment for FY1996; to 1.48 resulting in a 6.0 percent aggregate adjustment in FY1997; to 1.33 resulting in a 5.4 percent aggregate adjustment in FY1998; and to 1.23 resulting in a 5.0 percent aggregate adjustment in FY1999 through FY2001.

2. Direct Graduate Medical Education. No provision.

Conference agreement

1. Indirect Medical Education. The conference agreement includes the Senate provision with modifications. The IME formula multiplier would be set at 1.654 for FY 1996, resulting in a 6.7 percent aggregate payment adjustment; at 1.481 in FY1997 and FY1998, resulting in a 6.0 percent aggregate adjustment; at 1.383 in FY1999, resulting in a 5.6 percent aggregate adjustment; at 1.309 in FY2000, resulting in a 5.3 percent aggregate adjustment: and at 1.235 in FY2001 and thereafter, resulting in a 5.0 percent aggregate adjustment.

2. Direct Graduate Medical Education. The conference agreement includes the House provision with modifications. For cost reporting periods beginning on or after October 1, 1997, the weighting factor for a resident who had completed the initial residency period would be 0.25 FTEs. For cost reporting periods beginning on or after October 1, 1995, and on or before September 30, 2002, the Secretary is required to adjust payments to approved medical residency training programs in the fields of allopathic medicine and osteopathic medicine if the total number of such FTE residents in the fiscal year exceeds the number of FTE residents with respect to all such programs as of August 1, 1995. The Secretary is required to adjust payments to such approved medical residency training programs so that the total amount of payments does not exceed the amount that would have been paid if the number of FTE residents for all programs in a fiscal year did not exceed the number of FTE residents in all such programs as of August 1, 1995. The Secretary is authorized to provide that approved medical residency training programs that reduced or did not expand the number of FTE residents for a cost reporting period are not subject to the reduction in payments. The conference agreement does not include the House provision related to non-citizen medical residents.

D. ESTABLISHMENT OF ADVISORY PANEL FOR RECOMMENDING POLICIES REGARDING TEACHING HOSPITALS AND GRADUATE MEDICAL EDUCATION (SEC. 15421 OF HOUSE BILL)

Current law

No provision.

House bill

The bill would require the Chair of the Medicare Payment Review Commission to establish an advisory panel on reform in the financing of teaching hospitals and graduate medical education. The advisory panel would be required to study and make recommendations on reforming Federal policies regarding teaching hospitals and financing of graduate medical education. The recommendations of the panel would include the following: (1) the financing of graduate medical education, including consideration of alternative broad-based sources of funding; (2) the financing of teaching hospitals, including consideration of the competitive difficulties such hospitals face; (3) the methodology for making payments and the selection of entities to receive the payments; (4) Federal policies regarding international medical graduates; (5) the dependence of schools of medicine on service generate income; (6) the effects of the amendments made by the Omnibus Budget Reconciliation Act of 1995; and (7) the feasibility and desirability of reducing payments for graduate medical education for high-cost residency programs under Medicare.

The advisory panel would be composed of 19 members with expertise on matters related to graduate medical education. The advisory panel would be required to provide Congress with a first interim report (not later than one year after enactment), a second interim report (not later than 2 years after enactment), and final report (not later than 3 years after enactment). The advisory panel would terminate 180 days after the date on which the final report was submitted to Congress. The bill would authorize appropriations of such sums as may be necessary for each of the fiscal years 1996 through 2000.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision. The conferees believe that further study of graduate medical education funding is needed. Included among the issues requiring further study are: (1) the financing of graduate medical education, including consideration of alternative broad-based sources of funding for such education and the method of financing used for the MedicarePlus program under Part C of Title XVIII of the Social Security Act; (2) Federal policies regarding international medical graduates; and (3) the dependence of schools of medicine on service-generated income. The conferees would expect that Prospective

Payment Assessment Commission would study these issues and forward its findings to the relevant congressional committees.

SUBTITLE F—PROVISIONS RELATING TO MEDICARE PART A

A. General Provisions Related to Hospitals

1. REDUCTIONS IN INFLATION UPDATES FOR PPS HOSPITALS (SEC. 15501 OF HOUSE BILL; SEC. 7011 OF SENATE BILL)

Current law

Hospitals are paid on the basis of a prospectively fixed payment rate for costs associated with each discharge. Each hospital's basic payment rate is based on a national standardized payment amount, which is higher for hospitals in large urban areas than for other hospitals. Each standardized payment amount is adjusted by a wage index. Payment also depends on the relative costliness of the case, based on the diagnosis related group (DRG) to which the discharge is assigned. Additional payments are made for: extraordinary costs (outliers); indirect costs of medical education; and for hospitals serving a disproportionate share of low-income patients. Other exceptions and adjustments are made.

PPS payment rates are annually updated using an "update factor." The annual update factor applied to increase the Federal base payment amounts is determined, in part, by the projected increase in the hospital market basket index, which measures the costs of goods and services purchased by hospitals. Under the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), the PPS update factor for all PPS hospitals is equal to the percentage increase in the market basket minus 2 percentage points.

House bill

The proposal sets the update factor for FY1996 at MBI minus 2.5 percentage points for all hospitals in all areas, for FY1997–2002, at MBI minus 2.0 percentage points for all hospitals in all areas, and for FY2003 and each subsequent fiscal year equal to the MBI for all hospitals in all areas.

Senate bill

The bill sets the update factor for FY1996 through FY2002 for hospitals in all areas, the greater of: (1) the MBI minus 2.5 percentage points, or (2) 1.1 percent (1.3 percent for discharges during FY1996, 1.2 percent for discharges during FY1997). For FY2003 and each subsequent year, equal to the MBI for all hospitals in all areas.

Conference agreement

The conference agreement includes the House provision.

2. REDUCTIONS IN DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS (SEC. 15502 OF HOUSE BILL; SEC. 7014 OF SENATE BILL)

Current law

Under PPS, an adjustment is made to the payment to hospitals that serve a disproportionate share of low-income patients. The

DSH adjustment is intended to compensate hospitals that treat large proportions of low-income patients. The factors considered in determining whether a hospital qualifies for a DSH payment adjustment include the number of beds, the number of patient days, and the hospital's location. A hospital's disproportionate patient percentage is the sum of (1) the total number of inpatient days attributable to Federal SSI beneficiaries divided by the total number of Medicare patient days, and (2) the number of Medicaid patient days divided by total patient days, expressed as a percentage. A hospital is classified as a DSH under any of the following circumstances:

(1) If its disproportionate patient percentage equals or exceeds:

(a) 15 percent for an urban hospital with 100 or more beds, or a rural hospital with 500 or more beds (the latter is set by regulation);

(b) 30 percent for a rural hospital with more than 100 beds and fewer than 500 beds or is classified as a sole community hospital;

(c) 40 percent for an urban hospital with fewer than 100 beds; or

(d) 45 percent for a rural hospital with 100 or fewer beds, or

(2) if it is located in an urban area, has 100 or more beds, and can demonstrate that, during its cost reporting period, more than 30 percent of its net inpatient care revenues are derived from State and local government payments for care furnished to indigent payments. (This provision is intended to help hospitals in States that fund care for low-income patients through direct grants rather than expanded Medicaid programs.)

For a hospital qualifying on the basis of (1)(a) above, if its disproportionate patient percentage is greater than 20.2 percent, the applicable PPS payment adjustment factor is 5.88 percent plus .825 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage. If the hospital's disproportionate patient percentage is less than 20.2 percent, the applicable payment adjustment factor is equal to: 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage. If the hospital qualifies as a DSH on the basis of (1)(b), the payment adjustment factor is determined as follows:

(a) if the hospital is classified as a rural referral center, the payment adjustment factor is 4 percent plus 60 percent of the difference between the hospital's disproportionate patient percentage and 30 percent;

(b) if the hospital is a SCH, the adjustment factor is 10 percent;

(c) if the hospital is classified as both a rural referral center and a SCH, the adjustment factor is the greater of 10 percent or 4 percent plus 60 percent of the difference between the hospital's disproportionate patient percentage and 30 percent; and

(d) if the hospital is not classified as either a SCH or a rural referral center, the payment adjustment factor is 4 percent.

If the hospital qualifies on the basis of (1)(c), the adjustment factor is equal to 5 percent. If the hospital qualifies on the basis of (1)(d), the adjustment factor is 4 percent. If the hospital qualifies on the basis of (2) above, the payment adjustment factor is 35 percent.

House bill

The proposal would reduce the DSH payment by 20 percent for discharges occurring on or after October 1, 1995, and on or before September 30, 1996; 25 percent for discharges occurring on or after October 1, 1996, and on or before September 30, 1997; and 30 percent for discharges occurring on or after October 1, 1997.

Senate bill

The bill would reduce the DSH payment by 5 percent for discharges occurring during FY1996; 10 percent in FY1997; 15 percent in FY1998; 20 percent in FY1999; and 25 percent for fiscal years 2000 through 2002.

Conference agreement

The conference agreement includes the Senate provision with modifications. The DSH payment would be reduced from current law spending by 5.0 percent in FY1996; an additional 5 percent in FY1997; an additional 7.5 percent in FY1998; an additional 7.5 percent in FY1999; an additional 5 percent in FY2000; and remain at 30 percent for FY2001 through FY2002.

3. PAYMENTS FOR CAPITAL-RELATED COSTS FOR INPATIENT HOSPITAL SERVICES (SEC. 15503 OF HOUSE BILL; SEC. 7013 OF SENATE BILL)

Current law

In FY1992, Medicare began phasing in prospectively-determined per case rates for capital-related costs. During the 10-year transition to a single capital rate, payments will reflect both hospital-specific costs and a single Federal capital payment rate. During the transition, hospitals are paid according to either a fully prospective method or a "hold harmless" method of payment.

Capital payment rates are updated annually. For the first 5 years of the transition to prospectively determined per-case rates, historical cost increases were used to increase the Federal and hospital-specific rates. Under a budget neutrality requirement, per case capital rates were adjusted in the first 5 years of the transition so that total payments equaled 90 percent of estimated Medicare-allowed capital costs. In fiscal year 1996, the budget neutrality requirement will be lifted. In addition, the cost-based updates will be replaced by an "update framework" (developed by HCFA and proposed in the June 2, 1995 Federal Register), which will determine payment rate growth. This analytical framework is to take into account changes in the price of capital and appropriate changes in capital requirements resulting from development of new technologies and other factors.

Capital costs for PPS exempt hospitals are reimbursed on a reasonable cost basis.

Medicare's capital-related costs include local property taxes and property "fees" paid by nonprofit hospitals. The hospital-specific component of capital payments is based on a hospital's spending in a base year (generally 1990). Hospitals that have changed from nonprofit or public to proprietary may become subject to property taxes not included in their base; this may also occur as a result of changes in State or local law.

House bill

The provision would reduce aggregate payments for PPS and PPS-exempt capital payments by 15 percent of the allowable amount for FY1996 through FY2002. The capital payment reduction would not apply to payments for sole community hospitals or rural primary care hospitals (defined in the bill).

The provision would provide an adjustment for the amount of capital-related tax costs for eligible hospitals for discharges occurring after September 30, 1995. Eligible hospitals would be facilities that may otherwise receive capital payments, are not public hospitals, and incur capital-related tax costs for the fiscal year.

The provision would also amend the provision of additional exception payments for PPS-exempt hospital capital costs as follows: (1) urban hospitals with 100 beds would be eligible without regard to its DSH patient percentage or whether it qualifies for capital additional payments amounts; (2) the minimum payment level for qualifying hospitals would be 85 percent; (3) hospitals would be considered to meet the requirement that it completed a project involved no later than the end of the hospital's last cost reporting period beginning after October 1, 2001, if (I) the hospital obtained a certificate of need for the project approved by the State or a local planning authority, and (ii) by September 1, 1995, the hospital had expended on the project at least $750,000 or 10 percent of the estimated cost of the project; and (4) the amount of the exception payment made would not be reduced by any offsetting amounts.

Senate bill

The provision would reduce aggregate payments for PPS and PPS-exempt capital payments by 15 percent of the allowable amount for FY1996 through FY2002. The capital payment reduction would not apply to payments for sole community hospitals or rural primary care hospitals (defined in the bill).

The provision would provide an adjustment for the amount of capital-related tax costs for eligible hospitals for discharges occurring after September 30, 1995. Eligible hospitals would be facilities that may otherwise receive capital payments, are not public hospitals, and incur capital-related tax costs for the fiscal year.

The provision would also amend the provision of additional exception payments for PPS-exempt hospital capital costs as follows: (1) urban hospitals with 100 beds would be eligible without regard to its DSH patient percentage or whether it qualifies for capital additional payments amounts; (2) the minimum payment level for qualifying hospitals would be 80 percent; (3) hospitals would be considered to meet the requirement that it completed a project involved no later than the end of the hospital's last cost reporting period beginning after October 1, 2001, if (i) the hospital obtained a certificate of need for the project approved by the State or a local planning authority, and (ii) by September 1, 1995, the hospital had expended on the project at least $750,000 or 10 percent of the estimated cost of the project; and (4) the amount of the exception payment made would not be reduced by any offsetting amounts.

Conference agreement

The conference agreement includes the Senate provision with an amendment to reduce capital payments for PPS-exempt hospitals by 10 percent. Capital exceptions would have a minimum payment amount of 85 percent.

4. REDUCTION IN ADJUSTMENT FOR INDIRECT MEDICAL EDUCATION (SEC. 15504 OF HOUSE BILL; SEC. 7015 OF SENATE BILL)

House bill

The proposal would reduce the IME amount under Medicare by changing the current formula multiplier to 1.48, resulting in a 6.0 percent aggregate payment adjustment for FY1996-FY1998, with a further reduction the multiplier beginning in FY1999 and for each subsequent fiscal year, for a 5.6 percent aggregate payment adjustment, for every 10 percent increase in teaching intensity measured by the ratio of interns and residents per bed, and the number of discharges expected under PPS. (See Subtitle E above)

Senate bill

The proposal would reduce the IME amount under Medicare by changing the current formula multiplier to 1.65 resulting in a 6.7 percent aggregate payment adjustment for FY1996; to 1.48 resulting in a 6.0 percent aggregate adjustment in FY1997; to 1.33 resulting in a 5.4 percent aggregate adjustment in FY1998; and to 1.23 resulting in a 5.0 percent aggregate adjustment in FY1999 through FY2001.

Conference agreement

The conference agreement includes the Senate provision with modifications. (See Subtitle E above)

5. TREATMENT OF PPS-EXEMPT HOSPITALS (SEC. 15505 OF HOUSE BILL; SEC. 7012 OF SENATE)

Current law

Under Medicare, five types of specialty hospitals (psychiatric, rehabilitation, long-term care, children's and cancer) and two types of distinct-part units in general hospitals (psychiatric and rehabilitation) are exempt from PPS. They are subject to the payment limitations and incentives established in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Each provider is paid on the basis of reasonable cost subject to a rate of increase ceiling on inpatient operating costs. The ceiling is based on a target amount per discharge. The target amount for a cost reporting period is equal to the hospital's allowable inpatient operating costs (excluding capital and medical education costs) per discharge in a base year increased by applicable update factors for subsequent years. This amount is then multiplied by Medicare discharges, to yield the ceiling or upper limit on operating costs.

OBRA 93 provided that the applicable rate of increase percentage, or update, would be equal to the MBI minus 1.0 percent for FY1994-1997.

House bill

The provision would extend the target amount updates of the MBI minus 1 percentage point through FY2002.

The provision would also provide for rebasing the target amount for certain long-term care hospitals for discharges occurring on or after October 1, 1995.

The provision would also apply to long-term care units of hospitals not treated as PPS hospitals for discharges occurring on or after September 30, 1995. Not later than 12 months after the majority of the members of the Medicare Payment Review Commission have been appointed, the Commission would be required to report to Congress their recommendations for appropriate revisions in the treatment of long-term care hospitals located in the same building or the same campus as another hospital. The Secretary would also be required to report to Congress by June 1, 1996, after consultation with the Prospective Payment Assessment Commission and other appropriate parties, on the advisability and feasibility of providing for payment based on a prospective payment system for inpatient services of rehabilitation hospitals and units under Medicare.

Senate bill

The provision would set the update factor to the cost limits for PPS-exempt hospitals equal to the MBI minus 2.5 percentage points for FY1996 through FY2002. The update adjustment would vary for hospitals above and below TEFRA limits.

The Secretary would also be required to adjust, for hospitals receiving updates, the inflation update to be no less than 1.4 percent in FY1996; 1.3 percent in FY1997; and 1.1 percent for fiscal years 1998-2002.

The provision would adjust the TEFRA limits for new and existing PPS-exempt rehabilitation hospitals and units, and long-term care hospitals that begin receiving PPS-exempt payments on or after October 1, 1995.

The Secretary would also be directed to report on a prospective payment system for PPS-exempt hospitals no later than June 1, 1996.

Conference agreement

The conference agreement includes the Senate provision with several modifications. The conference agreement includes House language regarding rebasing of certain long term care hospitals with modifications. The conference agreement includes House language regarding classification of long term care hospitals within other hospitals. There are no market basket floors. There is no requirement for the Secretary to report on a prospective payments system for PPS-exempt hospitals.

6. REDUCTION IN PAYMENTS TO HOSPITALS FOR ENROLLEES' BAD DEBTS (SEC. 15506 OF HOUSE BILL)

Current law

Certain hospital and other provider bad debts are reimbursed by Medicare on an allowable cost basis. To be qualified for reimbursement, the debt must be related to covered services and derived from deductible and coinsurance amounts left unpaid by Medicare beneficiaries. The provider must be able to establish that reasonable collection efforts were made and that sound business judgement established that there was no likelihood of recovery at any time in the future.

House bill

The proposal would reduce bad debt payments to providers by 75 percent for cost reporting periods beginning during FY1996; 60 percent for cost reporting periods beginning during FY1997; and 50 percent for subsequent cost reporting periods.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

7. PROPAC RECOMMENDATIONS ON URBAN MEDICARE DEPENDENT HOSPITALS (SECTION 7077 OF SENATE BILL)

Current law

No provision.

House bill

No provision.

Senate bill

The provision would require ProPAC to report its recommendations to Congress, beginning in 1996, on an appropriate update to be used for urban hospitals with a high proportion of Medicare patient days and on actions to ensure that Medicare beneficiaries served by such hospitals retain the same access and quality of care as Medicare beneficiaries nationwide.

Conference agreement

The conference agreement does not include the House or Senate provision. The conference agreement establishes a separate payment update for certain hospitals with a high proportion of Medicare patient days. Hospitals qualifying include: (1) urban hospitals with no Medicare teaching or disproportionate share payments, 60 percent Medicare patient days; and (2) rural hospitals with more than 100 beds with no Medicare teaching or disproportionate share payments. Qualifying hospitals could receive an annual inflation update of market basket minus 2.0 percentage points in FY1996; market basket minus 1.7 percentage points in FY1997;

and market basket minus 2.0 percentage points in FY1998 through FY2002.

8. PERMANENT EXTENSION OF HEMOPHILIA PASS-THROUGH (SEC. 15507 OF HOUSE BILL)

Current law

Medicare makes additional payments for the costs of administering blood clotting factor to Medicare beneficiaries with hemophilia admitted for hospital stays where the clotting factor was furnished between June 19, 1990 and September 30, 1994.

House bill

The proposal would make the payment permanent.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

9. CONFORMING AMENDMENT TO CERTIFICATION OF CHRISTIAN SCIENCE PROVIDERS (SEC. 15508 OF HOUSE BILL; SEC. 7057(B) OF SENATE BILL)

Current law

Certain services furnished by a Christian Science sanatorium are covered under Medicare Part A if the institution is operated or listed and certified by the First Church of Christ, Scientists, Boston, Mass. Such a sanatorium qualifies as both a hospital and as a skilled nursing facility.

House bill

The provision would expand coverage of Christian Science sanatorium to include facilities (both hospitals and skilled nursing facilities) certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.

Senate bill

The provision would expand coverage of Christian Science sanatorium to include facilities (both hospitals and skilled nursing facilities) certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.

Conference agreement

The conference agreement includes the Senate provision.

10. SOLE COMMUNITY HOSPITALS (SEC. 15511 OF HOUSE BILL)

Current law

Sole Community Hospitals (SCHs) are facilities located in geographically isolated areas and are the sole provider of inpatient, acute cure hospital services in a geographic area based on distance, travel time, severe weather conditions, and/or market share. SCHs are paid the greater of what would be payable under PPS or a target amount comparable to that for PPS-exempt hospitals. Target amounts for SCHs are updated by an "applicable percentage increase" which is specified by statute and is generally pegged to the hospital market basket index. OBRA 93 provided separate SCH updates of MBI minus 2.2 percent for FY1995 and MBI minus 2.0 percent for FY1996. For FY1997 and thereafter, the update for SCHs is the same as for all PPS hospitals.

House bill

The provision would set the target amount update to the MBI minus 1 percentage point for fiscal years 1996–2000; and for FY2001 and each subsequent fiscal year, the applicable update would be applied.

The provision would require the Medicare Payment Review Commission to conduct a study of the impact of the designation of hospitals as SCHs on the delivery of health care services to individuals in rural areas, and include an analysis of the characteristics of the hospitals so designated. The Commission would be required to submit the report to Congress within 12 months after a majority of Commission members are first appointed.

Senate bill

No provision.

Conference agreement

The conference agreement includes the Senate provision.

11. CLARIFICATION OF TAXES CREDITED TO FUND (SEC. 15531 OF HOUSE BILL)

Current law

The Social Security Amendments of 1983 made up to half of Social Security benefits taxable for beneficiaries with incomes above a threshold level. That legislation provided that the Federal income tax revenue accruing from taxation of benefits would be credited to the Social Security trust funds. When OBRA of 1993 raised the maximum proportion of Social Security benefits subject to income taxation from 50% to 85%, effective Jan. 1, 1994, the additional income tax revenue was credited to the HI Trust Fund, effective upon enactment.

House bill

A House-passed tax bill (H.R. 1215) would repeal the 1993 legislation that raised the maximum taxable portion of Social Security benefits from 50% to 85%. That legislation was added to OBRA of 1995 before House passage of OBRA. Without corrective amendments, that legislation would result in a loss of revenue for the HI Trust Fund. Thus, Sec. 15531 of OBRA of 1995 would add language to Sec. 121(e) of the Social Security Amendments of 1983 to direct the Secretary of the Treasury to credit the HI Trust Fund with receipts from the taxation of Social Security benefits without regard to changes in the taxation of Social Security benefits that take affect after Dec. 31, 1993. Coupled with Sec. 19001(a)(2) of OBRA of 1995, which amends the provisions of H.R. 1215 that repeal the higher taxation of Social Security benefits, this language would place the HI fund in the same position financially with respect to credits from income tax revenue as it would be if taxation of Social Security benefits were not changed by OBRA of 1995. These transfers to HI would come from the general fund.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

12. GRADUATE MEDICAL EDUCATION AND DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS FOR MEDICARE CHOICE (SEC. 7016 OF SENATE BILL)

Current law

Medicare's HMO payment amount includes the costs of graduate medical education (direct graduate medical education (GME) payments and indirect medical education (IME) adjustments) in an area. Hospitals incurring graduate medical education and disproportionate share hospital (DSH) costs associated with Medicare HMO patients do not receive a direct payment from Medicare for such costs. The current formulas used to calculate a hospital's IME and GME payment amounts do not account for Medicare HMO patients.

House bill

No provision. (See Part VII)

Senate bill

The provision would change Medicare's current formulas for GME, IME, and DSH payments to count Medicare Choice patients in determining Medicare's hospital payments. In addition, the provision removes area hospitals' costs for IME, GME, and DSH from the calculation of Medicare Choice payments. Hospitals that care for Medicare Choice patients would bill Medicare and receive an additional Medicare payment or adjustment under GME, IME, and DSH.

Conference agreement

The conference agreement includes the House provision.

B. PAYMENTS FOR HOSPICE SERVICES (SEC. 7017 OF SENATE BILL)

Current law

Medicare covers hospice care for terminally ill beneficiaries with a life expectancy of 6 months or less. Payment for hospice care is based on one of four prospectively determined rates, which correspond to four different levels of care, for each day a beneficiary is under the care of the hospice. The four categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. These rates are updated annually by the hospital market basket index (MBI). OBRA 93 decreased the update for the payment rates as follows: FY 1994—MBI minus 2.0 percentage points; FY 1995—MBI minus 1.5 percentage point; FY 1996—MBI minus 1.0 percentage point; and FY 1997—MBI minus 0.5 percentage point. Beginning with FY 1998, the full hospital market basket percentage update will again apply.

House bill

No provision.

Senate bill

For each of the fiscal years 1996 through 2002, hospice payment rates would be updated by the greater of the market basket minus 2.5 percentage points, or 1.1 percent (1.4 percent in FY 1996 and 1.2 percent in 1997).

Conference agreement

The conference agreement includes the Senate provision with two amendments. Hospice payment rates would be updated by the market basket minus 2 percentage points for each of the fiscal years 1996 through 2002. There are no minimum market basket updates.

C. EXTENSION OF HI TAX TO ALL STATE AND LOCAL GOVERNMENT EMPLOYEES (SEC. 7108 OF SENATE BILL)

Current law

Medicare Part A coverage and payment of the HI tax apply to State and local government employees who are not under a retirement plan or who were hired after Mar. 31, 1986. State and local employees hired on or before that date may be covered at the election of the employer, however.

House bill

No provision.

Senate bill

Effective for services performed after Dec. 31, 1995, Sec. 3121(u)(2) of the Internal Revenue Code of 1986 and Sec. 210(p) of the Social Security Act would be amended to extend Medicare coverage to employees of State and local governments on the same basis as for other employees. Thus, all State and local employees would pay the HI tax. Appropriations would be authorized to the HI Trust Fund to cover benefits and administrative costs resulting from this provision and to offset losses in trust fund interest income associated with these expenditures. The Secretary of Health and Human Services would be directed to provide information to State and local employees about their Medicare coverage.

Conference agreement

The conference agreement does not include the Senate provision.

D. PAYMENTS TO SKILLED NURSING FACILITIES (SNFS)

1. DEFINITION OF ROUTINE SERVICE COSTS (SEC. 15521 OF HOUSE BILL; SEC. 7031 OF SENATE BILL)

Current law

SNFs are generally reimbursed on the basis of reasonable costs, subject to limits that are applied to per diem routine service costs (nursing, room and board, administrative, and other overhead). Non-routine, or ancillary services (such as therapy and certain equipment), and capital-related costs are excluded from the cost limits and are generally paid on the basis of reasonable costs.

Separate per diem limits for routine service costs are established for freestanding and hospital-based SNFs by urban or rural area. Freestanding SNF cost limits are set at 112 percent of the average per diem labor-related and nonlabor-related costs. Hospital-based SNF limits are set at the limit for freestanding SNFs, plus 50 percent of the difference between the freestanding limits and 112 percent of the average per diem routine services costs of hospital-based SNFs. The limits are adjusted by the hospital wage index to reflect differences in wage levels. The law authorizes the Secretary to allow for exceptions to the limits, based on case mix or circumstances beyond the control of the facility. The Secretary is required to rebase cost limits every 2 years, i.e. to develop cost limits using the latest available SNF cost report data every 2 years. In the interim the Secretary applies a SNF market basket developed by the Health Care Financing Administration (HCFA) to reflect changes in the price of goods and services purchased by SNFs.

SNFs providing less than 1,500 days of care per year to Medicare patients in the preceding year have the option of being paid a prospective payment rate set at 105 percent of the regional mean for all SNFs in the region. The rate covers routine and capital-related costs (and not ancillary services) and is calculated separately for urban and rural areas, adjusted to reflect differences in wage levels. Prospective rates can not exceed the routine service cost limit that would be applicable to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility. For low-volume SNFs, the Secretary is required to establish on an annual basis, prospective payments that reflect current SNF costs using the most recent data available from SNF cost reports. For SNFs receiving prospectively determined payment rates, the Secretary may pay for ancillary services on a reasonable charge basis, rather than on a cost basis, if the Secretary determines that a reasonable charge basis provides an equitable level of payment and eases the SNF's reporting burden.

House bill

For cost reporting periods beginning in FY 1997, the Secretary would be required to redefine routine service costs that would be subject to the routine cost limits. These would include all items used in the current definition—nursing, room and board, administrative, and other overhead—and, in addition, all ancillary services (including supplies and equipment), with the exception of non-routine services listed below.

Senate bill

In establishing an interim payment system (that would be in effect before the implementation of a prospective payment system for SNF care), the Secretary would be required, for cost reporting periods beginning in FY 1996, to redefine routine service costs that would be subject to the routine cost limits. These would include all items used in the current definition—nursing, room and board, administrative, and other overhead—and, in addition, all ancillary services (including supplies and equipment), with the exception of non-routine services listed below.

Conference agreement

The conference agreement includes the Senate provision.

2. INCENTIVES FOR COST EFFECTIVE MANAGEMENT OF COVERED NON-ROUTINE SERVICES (SEC. 15522 OF HOUSE BILL; SEC. 7032 OF SENATE BILL)

Current law

Currently non-routine ancillary services are generally paid on the basis of reasonable costs and are not subject to limits.

House bill

For cost reporting periods beginning in FY 1997, new payment limits would be established for non-routine services provided to Medicare beneficiaries receiving SNF care. For these purposes, non-routine services would be defined to include therapy services (physical and occupational therapy, speech language pathology, and respiratory therapy, including supplies and support services incident to the therapy services); prescription drugs; complex medical equipment; intravenous therapy and solutions (including enteral and parenteral nutrients, supplies, and equipment); radiation therapy; and diagnostic services, including laboratory, pulmonary, and radiology services (including tomography and imaging services).

The non-routine limit for a stay would be the sum of the following two amounts: 50 percent would be the facility-specific amount for these services; and 50 percent would represent the national average amount paid for these services for all SNF stays. The facility-specific amount would be calculated by summing (1) the average amount of payments made to a facility under Part A for non-routine services during a stay and (2) the Secretary's best estimate of the average amount of payments made under Part B for covered non-routine services furnished to all residents provided SNF care under Part A.

In establishing base year payments for the new limits, the Secretary would be required to use cost reporting periods ending September 30, 1994. These base year payments would be updated to FY 1997 by the SNF market basket. In subsequent years, per stay limits would be updated by the SNF market basket minus 2 percentage points. National average payments used for determining a facility's per stay limit would be calculated separately for freestanding and hospital-based SNFs. Separate per stay limits would apply to residents of SNFs who require intensive nursing or therapy services. The Secretary, after consulting with the Medicare Payment Review Commission and SNF experts, would be required to develop and publish this separate limit by June 30, 1996, and would be required to ensure its budget neutrality. The Secretary would also be required to rebase facility-specific amounts for cost reporting periods beginning October 1, 1999, and every 2 years thereafter. A SNF stay would be defined by the number of continuous days a beneficiary spent in the facility during a covered spell of illness.

An aggregate payment limit for non-routine services would also be determined annually for each SNF. This would be calculated by multiplying the number of SNF stays for which payments for these services were made times the blended payment limit. This amount would be compared to actual interim payments made to the SNF for these services; these payments would be based on the facility's reasonable costs of providing these services. If total payments for the year were below the SNF's aggregate payment limit, then the SNF would be allowed to retain 50 percent of the difference, up to 5 percent of total amount paid to the facility for covered non-routine services. In the event that total payments exceeded the SNF's payment limit, the Secretary would be required to reduce payments for new stays in the next fiscal year at such times and in a manner the Secretary considers appropriate.

SNFs would be required to bill Medicare for all services provided to beneficiaries eligible for SNF care, regardless of whether the service was provided by the facility, by others under arrangements with the facility, or under any other contracting or consulting arrangement. For beneficiaries residing in SNFs not eligible for Part A SNF benefits but receiving covered non-routine services, the SNF would again be required to bill for covered Part B services (except for portable x-ray or portable electrocardiogram services treated as a physician service). SNFs would be required to maintain records of all covered non-routine services furnished beneficiaries.

The Secretary could provide for exceptions to the per stay limits, so long as additional payments were budget neutral and did not exceed 5 percent of aggregate payments to all SNFs for covered non-routine services. New SNFs not receiving payments for non-routine services in the base year period of FY 1994 would be subject to the national average payment limit described above. Low-volume SNFs receiving prospective payments would not be subject to the new non-routine limits. Before furnishing a covered x-ray service to a Medicare beneficiary, SNFs would be required to consider the appropriateness of portable x-ray services, taking into account the cost effectiveness of the service and the convenience to the resident.

Senate bill

Under the interim payment system, new payment limits would be established for non-routine services provided to Medicare beneficiaries receiving SNF care during cost reporting periods beginning in FY 1996. For these purposes, non-routine services would be defined to include therapy services (physical and occupational therapy, speech language pathology, and respiratory therapy); prescription drugs; complex medical equipment; intravenous therapy and solutions (including enteral and parenteral nutrients, supplies, and equipment); radiation therapy; and diagnostic services, including laboratory, pulmonary, and radiology services (including tomography and imaging services).

The non-routine limit for a stay would be a facility-specific amount. The facility-specific amount would be calculated by summing (1) the amount of payments made to a facility under Part A for non-routine services during a stay and (2) the Secretary's best estimate of the amount of payments made under Part B for covered non-routine services furnished to all residents provided SNF care under Part A, and then dividing this sum by the average number of days per stay for all residents of the SNF.

In establishing base year payments for the new limits, the Secretary would be required to use cost reporting periods ending September 30, 1994. These base year payments would be updated to FY 1996 by the SNF market basket. In subsequent years, per stay limits would be updated by the greater of the SNF market basket minus 2.5 percentage points or 1.2 percent (1.1 percent for fiscal years after 1997). Separate per stay limits would apply to residents of SNFs who require intensive nursing or therapy services. The Secretary, after consulting with the Prospective Payment Assessment Commission and SNF experts, would be required to develop and publish this separate limit and would be required to ensure its budget neutrality. A SNF stay would be defined by the number of continuous days a beneficiary spent in the facility during a covered spell of illness.

An aggregate payment limit for non-routine services would also be determined annually for each SNF. This would be calculated by multiplying the number of SNF stays for which payments for these services were made times the per stay payment limit. This amount would be compared to actual interim payments made to the SNF for these services; these payments would be based on the facility's reasonable costs of providing these services. If total payments exceeded the SNF's aggregate payment limit, the Secretary would be required to reduce payments for new stays in the next fiscal year at such times and in a manner the Secretary considers appropriate.

SNFs would be required to bill Medicare for all services provided to beneficiaries eligible for SNF care, regardless of whether the service was provided by the facility, by others under arrangements with the facility, or under any other contracting or consulting arrangement. For beneficiaries residing in SNFs not eligible for Part A SNF benefits but receiving covered non-routine services, the SNF would again be required to bill for covered Part B services. SNFs would be required to maintain records of all covered non-routine services furnished beneficiaries.

The Secretary could provide for exceptions to the per stay limits, so long as additional payments were budget neutral and did not exceed 5 percent of aggregate payments to all SNFs for covered non-routine services. New SNFs not receiving payments for non-routine services in the base year period of FY 1994 would be subject to the national average payment limit described above. The Secretary would be required to determine an appropriate manner in which to apply the non-routine limits to low-volume SNFs receiving prospective payments.

Conference agreement

The conference agreement includes the Senate provision with amendments. In establishing base year payments for new non-routine limits, the Secretary would be required to use cost reporting periods ending December 31, 1994. Beginning in FY 1997, per stay non-routine limits would be updated by the SNF market basket minus 2 percentage points. Non-routine services would include supplies and support services directly related to therapy. SNFs would be required to bill for all covered Part B services, except for portable x-ray or portable electrocardiogram services treated as a physician service, and physician services that are not covered routine or non-routine services. Before furnishing a covered x-ray service to a Medicare beneficiary, SNFs would be required to consider the appropriateness of portable x-ray services, taking into account the cost effectiveness of the service and the convenience to the resident.

3. PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITIES (SEC. 7025 OF SENATE BILL)

Current law

No provision.

House bill

No provision.

Senate bill

For cost reporting periods beginning in FY 1998, the Secretary would be required to establish a prospective payment system for SNF care under which fixed payments would be made for episodes of care. Payments would be required to cover all services, including all routine and non-routine services (except for physician services) and capital costs. Payment amounts would be required to take into account case-mix, patient acuity, and such other factors as the Secretary determines appropriate. Total payments under the new prospective system could not exceed 90 percent of amounts that would have been made for routine and non-routine and capital expenditures if the system were not established. The Secretary would be required to reduce the prospective payment rates to take into account beneficiary coinsurance payments. The prospective payment system would also be required to reflect savings from the new payment limits established for non-routine services, savings from the OBRA 93 freeze on routine costs limits, and the 15 percent reduction in capital payments.

Conference agreement

The conference agreement includes the Senate provision.

4. REVISED SALARY EQUIVALENCE LIMITS (SEC. 7037 OF SENATE BILL)

Current law

Medicare statute authorizes the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare.

House bill

No provision.

Senate bill

The Secretary would be required to determine the non-routine facility-specific per stay payment amounts as if salary equivalency guidelines were in effect for occupational, physical, respiratory, and speech pathology therapy services for the last 12-month cost reporting period of the facility on or before September 30, 1994.

Conference agreement

The conference agreement does not include the Senate provision.

5. PAYMENTS FOR ROUTINE SERVICE COSTS (SEC. 15523 OF HOUSE BILL; SEC. 7033 OF SENATE BILL)

Current law

OBRA 93 required that there be no changes in SNF cost limits (including no adjustments for changes in the wage index or updates of data) for cost reporting periods beginning in FY 1994 and FY 1995, or in prospective payment amounts for low-volume SNFs during these cost reporting periods. The Secretary was also required, when granting or extending exceptions to cost limits, to limit any exception to the amount that would have been granted if there were no restriction on changes in cost limits. OBRA 93 also repealed the requirement that additional payments be made to hospital-based SNFs for costs attributable to excess overhead allocations, effective for cost reporting periods beginning on or after October 1, 1993. Payments to proprietary SNFs for return on equity were also eliminated, effective for cost reporting periods beginning on or after October 1, 1993.

House bill

Beginning in FY 1996, the proposal would permanently extend the savings stream, but not the OBRA 93 freeze on SNF cost limits, by not allowing for the inflation that occurred during the freeze years. Low-volume SNFs receiving prospective payments would be subject to the permanent extension of the savings stream of the freeze.

Reimbursements for exceptions to routine cost limits in FY 1997 would be limited to aggregate payments made in FY 1996, adjusted for increases in the SNF market basket. In future fiscal years, increases in aggregate payments for exceptions to the limits would be limited by percentage increases in the SNF market basket. The Secretary would be required to provide exceptions only to those facilities that make annual applications for adjustments.

Senate bill

Beginning in FY 1996, the proposal would permanently extend the savings stream, but not the OBRA 93 freeze on SNF cost limits, by not allowing for the inflation that occurred during the freeze years. Low-volume SNFs receiving prospective payments would be subject to the permanent extension of the savings stream of the freeze. Beginning in FY 1996, the Secretary would be required to take into account the new definition of routine service costs in determining routine cost limits.

Reimbursements for exceptions to routine cost limits in FY 1996 would be limited to aggregate payments made in FY 1994, updated to FY 1996 by the SNF market basket. In future fiscal years, increases in aggregate payments for exceptions to the limits would be limited by percentage increases in the SNF market basket. The Secretary would be required to provide exceptions only to those facilities that make annual applications for adjustments.

Conference agreement

The conference agreement includes the Senate provision.

6. REDUCTIONS IN PAYMENT FOR CAPITAL-RELATED COSTS (SEC. 15524 OF HOUSE BILL; SEC. 7034 OF SENATE BILL)

Current law

Capital-related costs of SNFs are paid on the basis of reasonable costs and are excluded from cost limits.

House bill

SNF capital cost payments would be reduced by 15 percent for cost reporting periods occurring during FY 1996–2002.

Senate bill

SNF capital cost payments would be reduced by 15 percent for cost reporting periods occurring during FY 1996–2002.

Conference agreement

The conference agreement includes the Senate provision with an amendment to reduce capital payments by 10 percent.

7. TREATMENT OF ITEMS AND SERVICES PAID FOR UNDER PART B (SEC. 15525 OF HOUSE BILL; SEC. 7035 OF SENATE BILL)

Current law

Certain covered Part B services provided in SNFs are paid the lesser of reasonable costs or charges.

House bill

For services billed at the lesser of costs or charges, reasonable costs would be reduced by 5.8 percent from amounts currently recognized as reasonable for cost reporting periods occurring during fiscal years 1996 through 2002. For Medicare covered Part B services (except for portable x-ray or portable electrocardiogram services treated as a physician service), payments would have to be made to the SNF, regardless of whether the service was provided by the facility, by others under arrangements with the facility, or under any other arrangement. These services would be excluded from coverage if not billed by the SNF.

Senate bill

For services billed at the lesser of costs or charges, reasonable costs would be reduced by 5.8 percent from amounts currently recognized as reasonable for cost reporting periods occurring during fiscal years 1996 through 2002. For Medicare covered Part B services (except for physicians providing evaluation and management services to patients under their care), payments would have to be made to the SNF, regardless of whether the service was provided by the facility, by others under arrangements with the facility, or under any other contracting or consulting arrangement. These services would be excluded from coverage if not billed by the SNF.

Conference agreement

The conference agreement includes the Senate provision with an amendment. Payments would have to be made to SNFs for covered Part B services, except for portable x-ray and portable electrocardiogram services treated as a physician service, and physician services that are not covered routine or non-routine services.

8. CERTIFICATION OF FACILITIES MEETING REVISED NURSING HOME REFORM STANDARDS (SEC. 15526 OF HOUSE BILL)

Current law

OBRA 87 comprehensively revised Medicare and Medicaid requirements for nursing homes participating in the programs. These provisions, collectively referred to as nursing home reform law, are virtually identical in Medicare and Medicaid statutes. They have three major parts: (1) requirements that nursing homes must meet in order to be certified to participate in Medicare and/or Medicaid, including requirements about assessments of residents, available services, nurse staffing, nurse aide training, and resident rights; (2) provisions revising the survey and certification process that State survey agencies must use for determining whether nursing homes comply with the requirements for participation; and (3) provisions that expand the range of sanctions and penalties that States and the Secretary of HHS may impose against nursing homes found to be out of compliance with the requirements for participation.

The Commerce Committee has reported legislation transforming the Medicaid program into a new MediGrant program authorized under Title XXI of the Social Security program. The new program would replace the OBRA 87 nursing home reform provisions with more general requirements for assuring quality care in nursing homes.

House bill

Effective for cost reporting periods beginning in FY 1996, the proposal would repeal OBRA 87 nursing home reform requirements and require that SNFs participating in Medicare either be certified by the Secretary as meeting new requirements that would replace OBRA 87 reforms or be State-certified. State-certified facilities would include facilities licensed or certified as a SNF by the State in which it is located, or a facility which otherwise meets the requirements for nursing facilities specified under the Medicaid or new MediGrant authorities.

The Secretary would be required to establish and maintain standards in the following areas for SNFs providing Medicare covered services: the treatment of resident medical records; policies, procedures, and bylaws for operation; quality assurance systems; resident assessment procedures, including care planning and outcome evaluation; the assurance of a safe and adequate physical plant for the facility; qualifications for staff sufficient to provide adequate care; and utilization review.

Standards for SNFs would also be required to provide for the protection and enforcement of resident rights, including rights to exercise the individual's rights as a resident of the facility and as a citizen or resident of the U.S.; to receive notice of rights and services; to be protected against the misuse of resident funds; to be provided privacy and confidentiality; to voice grievances; to examine the results of certification program inspections; to refuse to perform services for the facility; to be provided privacy in communications and to receive mail; to have the facility provide immediate access to any resident by any representative of the certification program, the resident's individual physician, the State long-term care ombudsman, and any person the resident has designated as a visitor; to retain and use personal property; to be free from abuse, including verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion; and to be provided with prior written notice of a pending transfer or discharge.

Standards established by the Secretary for SNFs could take effect only after public notice and an opportunity for comment.

The Secretary would also be required to provide for the establishment and operation of a program for the certification of SNFs that meet specified standards as well as the decertification of those facilities that fail to meet the standards. The Secretary would be required to ensure public access (as defined by the Secretary) to the certification program's evaluations of participating facilities, including compliance records and enforcement actions and other reports regarding ownership, compliance histories, and services provided by certified facilities. The Secretary would be required to audit expenditures under the program, not less often than every 4 years, through an entity designated by the Secretary and not affiliated with the program.

The Secretary would be required to impose certain sanctions against SNFs not meeting requirements. If the Secretary determines that a facility certified either by the Secretary or State no longer substantially meets the requirements for participation and further determines that the facility's deficiencies immediately jeopardize the health and safety of residents, then the Secretary would be required, at a minimum, to terminate the facility's certification for participation. If the facility's deficiencies do not immediately jeopardize the health and safety of residents, the Secretary could, in lieu of termination, provide lesser sanctions, including denial of payment for persons admitted after a specified date.

The Secretary could not impose sanctions until a facility has had a reasonable opportunity to correct its deficiencies, following the initial determination that it no longer substantially meets the requirements for certification, and, has been given reasonable notice and opportunity for a hearing. The Secretary's decision to deny payment for new admissions would be effective only after notice to the public and the facility, as may be provided for by the Secretary. Denial of payment for new admissions would end when the Secretary finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance). Facilities would, however, be required to be in compliance by the end of the eleventh month following the month when the decision to deny payments becomes effective. If facilities did not substantially meet the requirements by that time, the Secretary would be required to terminate their certification for participation.

Senate bill

No provision; current law nursing home reform provisions would be retained.

Conference agreement

The conference agreement does not include the House provision.

9. MEDICAL REVIEW PROCESS (SEC. 15527 OF HOUSE BILL; SEC. 7036 OF SENATE BILL)

Current law

No Provision.

House bill

The Secretary would be required to implement a medical review process to examine the effects of the amendments of this part on the quality of care received by Medicare beneficiaries, placing a particular emphasis on the quality of non-routine covered services.

Senate bill

The Secretary would be required to implement a medical review process to examine the effects of the amendments of this part on the quality of care received by Medicare beneficiaries, placing a particular emphasis on the quality of non-routine covered services.

Conference agreement

The conference agreement includes the Senate provision.

10. REPORT (SEC. 15528 OF HOUSE BILL; SEC. 7038 OF SENATE BILL)

Current law

The Prospective Payment Assessment Commission has been authorized to review and make recommendations on prospective payment for SNF care.

House bill

The newly established Medicare Payment Review Commission would be required to report on Medicare's method for paying for

SNF care and would be required to include in the report: (1) an analysis of the effect of the new payment limits for non-routine services on payments for and the quality of SNF services (2) an analysis of the advisability of determining the amount of payment for covered non-routine services on the basis of amounts paid for such services under Part B of the program; (3) an analysis of the desirability of maintaining separate limits for hospital-based and freestanding SNFs; (4) an analysis of the quality of services furnished by SNFs; and (5) an analysis of the adequacy of the process and standards used for exceptions to routine cost limits.

Senate bill

The Prospective Payment Assessment Commission would be required to report on Medicare's method for paying for SNF care and would be required to include in the report: (1) an analysis of the effect of the new payment limits for non-routine services on payments for and the quality of SNF services (2) an analysis of the advisability of determining the amount of payment for covered non-routine services on the basis of amounts paid for such services under Part B of the program; (3) an analysis of the desirability of maintaining separate routine cost limits for hospital-based and freestanding SNFs; (4) an analysis of the quality of services furnished by SNFs; (5) an analysis of the adequacy of the process and standards used for exceptions to routine cost limits; and (6) an analysis of the effect of the new SNF prospective payment methodology on the payments for and quality of SNF services, including an evaluation of the baseline used in establishing a system for payment of SNF services.

Conference agreement

The conference agreement includes the Senate provision.

11. EFFECTIVE DATE (SEC. 15529 OF HOUSE BILL; SEC. 7039 OF SENATE BILL)

Current law

No provision.

House bill

Except as otherwise noted, the provisions would be effective for services furnished during cost reporting periods beginning on or after October 1, 1996.

Senate bill

Except as otherwise noted, the provisions would be effective for services furnished during cost reporting periods beginning on or after October 1, 1996.

Conference agreement

The conference agreement includes the Senate provision.

12. NURSE AIDE TRAINING IN SKILLED NURSING FACILITIES SUBJECT TO EXTENDED SURVEY (SEC. 7019 OF SENATE BILL)

Current law

Skilled nursing facilities (SNFs) are prohibited from offering a nurse aide training program by or in the facility if within the previous 2 years it has had a waiver of the registered nurse staffing requirement, or has been subject to an extended survey as a result of a finding that it has provided substandard care, or has been subject to sanctions for noncompliance with requirements.

House bill

No provision.

Senate bill

The provision would allow SNFs otherwise prohibited from offering a nurse aide training program to do so, if the State determines that there would be no other program offered within a reasonable distance, provided notice of the approval to the State long-term care ombudsman, and assured through an oversight effort that an adequate environment exists for the program.

Conference agreement

The conference agreement includes the Senate provision.

PROVISIONS RELATING TO RURAL ISSUES

1. MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS (SECTION 7071 OF SENATE BILL)

Current law

Medicare dependent hospitals are hospitals located in a rural area, with 100 beds or less, that are not classified as a sole community provider, and for which not less than 60 percent of inpatient days or discharges in the hospital cost reporting period are attributable to Medicare. These hospitals are reimbursed on the same basis as sole community hospitals. The designation for Medicare-dependent, small rural hospitals expired on July 30, 1994.

House bill

No provision.

Senate bill

The provision would re-institute the Medicare-dependent hospital program effective for cost reporting periods on or after September 1, 1995 and before October 1, 2000.

Conference agreement

The conference agreement includes the Senate provision.

2. CRITICAL ACCESS HOSPITAL (SEC. 7072 OF SENATE BILL)

Current law

No provision.

House bill

No provision.

Senate bill

The provision would amend section 1820 to provide the Medicare Rural Hospital Flexibility Program, a limited service hospital program available to all States. Certain grants would be available to States to establish rural hospital networks consisting of at least one critical access hospital and limited service hospitals. Hospitals seeking to become limited service hospitals would be required to have an average length of stay of 72 hours and 6 beds; hospitals participating in the swing bed program could use 12 beds. Medicare would pay these facilities on a reasonable cost basis. The provision would authorize appropriations of $25 million for the program from the Federal Hospital Insurance Trust Fund for grants to States.

Conference agreement

The conference agreement includes the Senate provision.

3. RURAL EMERGENCY ACCESS CARE HOSPITALS (REACHS) (SEC. 15513 OF HOUSE BILL; SEC. 7073 OF SENATE BILL)

Current law

No provision.

House bill

The bill would provide for the establishment of a new category of hospitals under Medicare to provide for medical screening examinations and treatment for emergency medical conditions and active labor for rural facilities that are in danger of closing due to low inpatient utilization rates and operating losses and whose closing would reduce access to emergency services. Such facilities would have to meet specific requirements including those relating to appropriate medical staffing, referral arrangements; and diagnostic and laboratory services. Facilities would be reimbursed on a reasonable cost basis.

Senate bill

The bill would provide for the establishment of a new category of hospitals under Medicare to provide for medical screening examinations and treatment for emergency medical conditions and active labor for rural facilities that are in danger of closing due to low inpatient utilization rates and operating losses and whose closing would reduce access to emergency services. Such facilities would have to meet specific requirements including those relating to appropriate medical staffing, referral arrangements; and diagnostic and laboratory services. Facilities would be reimbursed on a reasonable cost basis.

Conference agreement

The conference agreement includes the Senate provision.

4. CLASSIFICATION OF RURAL REFERRAL CENTERS (SEC. 15514 OF HOUSE BILL)

Current law

Referral centers are paid prospective payments based on the applicable urban payment amount rather than the rural payment amount, as adjusted by the hospital's area wage index. The applicable amount is the "other urban" rate (i.e., the rate for urban areas with 1 million or fewer people) for all referral centers except those (if any) located in MSAs greater than 1 million. These centers are defined as:

(1) rural hospitals having 275 or more beds;

(2) hospitals having at least 50 percent of their Medicare patients referred from other hospitals or from physicians not on the hospital's staff, at least 60 percent of their Medicare patients residing more than 25 miles from the hospital, and at least 60 percent of the services furnished to Medicare beneficiaries are furnished to those who live 25 miles or more from the hospital; or

(3) rural hospitals meeting the following criteria for hospital cost reporting periods beginning on or after October 1, 1985:

(a) a case mix index equal to or greater than the median case mix for all urban hospital (the national standard), or the median case mix for urban hospitals located in the same census region, excluding hospitals with approved teaching programs;

(b) a minimum of 5,000 discharges, the national discharge criterion (3,000 in the case of osteopathic hospitals), or the median number of discharges in urban hospitals for the region in which the hospital is located; and

(c) at least one of the following three criteria: more than 50 percent of the hospital's medical staff are specialists, at least 60 percent of discharges are for inpatients who reside more than 25 miles from the hospital, or at least 40 percent of inpatients treated at the hospital have been referred either from physicians not on the hospital's staff or from other hospitals.

OBRA 93 extended the classification through FY1994 for those referral centers classified as of September 30, 1992.

House bill

The bill would prohibit the Medicare Geographic Classification Review Board from denying a referral centers request for reclassification on the basis of any comparison between the average hourly wage of the hospital and the average hourly wage of hospitals in the area in which it is located. Hospitals would be allowed to submit applications to the Board during the 30-day period beginning on the date of enactment requesting a change in classification for purposes of determining the area wage index applicable to the hospital for FY1997, if the hospital would be eligible for such change except for its failure to meet the deadline for applications.

The bill would, beginning in FY1996, extend the referral center classification of any hospital classified as a referral center for

FY1994, and such hospitals would continue to be classified as a referral center for each subsequent fiscal year.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

5. FLOOR ON AREA WAGE INDEX (SEC. 15515 OF HOUSE BILL)

Current law

As part of the methodology for determining prospective payments to hospitals under PPS, the Secretary is required to adjust a portion of the standardized amounts for area differences in hospital wage levels by a factor reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

House bill

For discharges occurring on or after October 1, 1995, the area wage index applicable for any hospital which was not located in a rural area could not be less than the average of the area wage indices applicable to hospitals located in rural areas in the State in which the hospital was located. The Secretary would be required to make any adjustments in the wage index in a budget neutral manner.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

6. CLARIFICATION OF TREATMENT OF ESSENTIAL ACCESS COMMUNITY HOSPITAL/RURAL PRIMARY CARE HOSPITAL (EACH/RPCH) (SEC. 15512 OF HOUSE BILL; SEC. 7072 OF SENATE BILL)

Current law

Under the EACH demonstration program up to 7 States may be designated by the Secretary to receive grants to develop rural health networks consisting of essential access community hospitals (EACHs) and rural primary care hospitals (RPCHs). Individual hospitals may be designated as EACHs and RPCHs. In order to receive designation by a State as a RPCH, a facility must meet certain criteria, including a requirement that inpatient stays not exceed 72 hours.

Montana also has a limited hospital program called the Medical Assistance Facility (MAF).

House bill

The provision would allow the EACHs to continue to receive special payments under Medicare determined in the same manner as for sole community hospitals (SCHs), and RPCHs to continue to receive Medicare payments for their services, even in fiscal years in which the program did not receive appropriations.

Senate bill

The provision would allow EACHs to continue to receive payments under Medicare determined in the same manner as for SCHs, and RPCHs to continue to receive Medicare payments for their services. The MAF program would also be continued for all qualifying facilities in Montana.

Conference agreement

The conference agreement includes the Senate provision.

7. ADDITIONAL PAYMENTS FOR SERVICES FURNISHED IN SHORTAGE AREAS (SEC. 7074 OF SENATE BILL)

Current law

The law authorizes a bonus payment of an additional 10 percent for physicians services furnished in a health professional shortage area.

House bill

No provision.

Senate bill

The provision would increase the bonus payment in health professional shortage areas from 10 percent to 20 percent and limit the bonus to primary care services. Such payments would be continued for the three year period following the withdrawal of the health professional shortage area designation for an area, provided such withdrawal occurs on or after January 1, 1996. Carriers would be required to provide information periodically to the Secretary on the types of providers to whom the carrier makes bonus payments.

The Physician Payment Review Commission would be required to conduct a study of the effectiveness of bonus payments in recruiting physicians to provide services in health professional shortage areas. Within one year of enactment, the Secretary would be required to submit a report to Congress, together with recommendations, on such study.

Conference agreement

The conference agreement includes the Senate provision.

8. PAYMENTS TO PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS (SEC. 7075 OF SENATE BILL)

Current law

Physician assistants are paid directly for their services, when provided under the supervision of a physician: (i) in a hospital, skilled nursing facility, or nursing facility, (ii) as an assistant at surgery; or (iii) in a rural area designated as a health manpower shortage area. Payments equal a percentage of what would be paid if the services were performed by a physician, namely 65% of the fee schedule amount for services performed as an assistant at surgery, 75% for other hospital services, and 85% for other services.

Nurse practitioners are paid directly for services provided in collaboration with a physician which are furnished in a nursing facility. Payments equal 85% of the physician fee schedule amount. Nurse practitioners are also paid directly for services provided in collaboration with a physician in a rural area. Payments equal 75% of the physician fee schedule amount for services furnished in a hospital and 85% of the fee schedule amount for other services.

House bill

No provision.

Senate bill

The provision would permit direct payment for services in outpatient or home settings provided by physician assistants and nurse practitioners in collaboration with a physician. Payment would equal 80% of the lesser of either the actual charge or 85% of the physician fee schedule amount.

Conference agreement

The conference agreement includes the Senate provision.

9. TELEMEDICINE DEMONSTRATION (SEC. 7076 OF SENATE BILL)

Current law

Certain grants have been available through the Office of Rural Health Policy's Rural Telemedicine Grant Program to demonstrate and collect information on the feasibility, cost, appropriateness, and acceptability of telemedicine consultations for improving access to health services for rural residents and reducing the isolation of rural practitioners.

House bill

No provision.

Senate bill

The provision would establish a new grant program through the Office of Rural Health to award grants to eligible entities to establish demonstration projects under which are eligible entity would establish a rural-based consortium that would enable members of the consortium to utilize the telecommunications network in the delivery of health care services in rural areas through the use of telemedicine. The provision would authorize appropriations of $10 million for each of the fiscal years 1996 through 1998.

Conference agreement

The conference agreement includes the Senate provision.

SUBTITLE G—PROVISIONS RELATING TO MEDICARE PART B

A. PROVIDER/PRACTITIONER PAYMENTS

1. PAYMENTS FOR PHYSICIANS SERVICES (SEC. 15601 OF HOUSE BILL; SEC. 7041 OF SENATE BILL)

Current law

Payments for physicians services are made on the basis of a fee schedule. The fee schedule assigns relative values to services based on the time, skill, and intensity it takes physicians to provide them. The relative values are adjusted for geographic variations in the costs of practicing medicine. The adjusted relative values are converted into a dollar payment amount by a conversion factor. There are three conversion factors: one for surgical services, one for primary care services, and one for all other services. The 1995 conversion factors are $39.45 for surgical services, $36.38 for primary care services, and $34.62 for other services.

Conversion factors are updated each year by a *default formula.* The update equals inflation as measured by the Medicare Economic Index (MEI), plus or minus the difference between actual physician spending for the category of services in a base period compared to the *Medicare Volume Performance Standard (MVPS)* for that category for the period. (If spending was below the MVPS, the update is larger than the MEI; if spending exceeded the MVPS, the update is less than the MEI).

The MVPS is a goal for the rate of expenditure growth from one fiscal year to the next. The calculation of the MVPS for a year is based on estimates of several factors (changes in fees, enrollment, volume and intensity, and laws and regulations). The MVPS derived from the calculation is subject to a reduction which is known as the *performance standard factor.* The performance standard factor is four percentage points for FY 1995 and subsequent years.

House bill

a. Replacement of Medicare Volume Performance Standard. The provision would replace the MVPS with a sustainable growth rate beginning for FY 1996. The provision would establish the sustainable growth rate for FY 1996 based on: (I) changes in the MEI, (ii) changes in Medicare enrollment (excluding Medicare Plus and HMO enrollees), (iii) growth in the real gross domestic product from FY 95 to FY 96 plus 2 percentage points; and (iv) changes resulting from changes in law (determined without taking into account changes in volume or intensity or changes resulting from changes in the calculation of the conversion factor update). For each subsequent fiscal year beginning in 1997, the sustainable growth rate would equal the previous year's rate, updated by the same factors used to set the FY 96 rate.

b. Conversion Factor Update. The provision would modify the calculation of the update beginning in 1997. The provision would specify that the update for a year would equal the MEI, subject to an adjustment to match the cumulative sustainable growth rate. Specifically, the update for a year would equal the MEI, plus or minus the difference between the percentage increase in actual physician spending for the 12-month period ending the previous June compared to the allowable growth rate for the year. The allowable growth rate would be based on the cumulative sustainable growth rate from the base year 1995. If spending was below the cumulative sustainable growth rate, the update would be larger than the MEI; if spending exceeded the cumulative sustainable growth rate, the update would be less than the MEI. However, limits would be established on allowable variation from the MEI. The update could not be more than 103 percent of the MEI. It could not be less than 93 percent of the MEI in 1996, 92.25 percent of the MEI in 1998, or 92 percent of the MEI in 1999 and subsequent years.

The provision would require the Secretary to submit to Congress by November 1 of each year, beginning in 1996, a report describing the update in the conversion factor for the following year. The Medicare Review Commission would review the report and submit to Congress by December 1 a report containing an analysis of the conversion factor.

c. Single Conversion Factor. The provision would provide for the establishment of a single conversion factor, rather than three conversion factors, effective January 1, 1996. It would set the factor for 1996 at $35.42.

Senate bill

a. Replacement of Medicare Volume Performance Standard. The provision would require the Secretary to transmit to the Congress by April 15 of each year (beginning with 1996) a recommendation on the sustainable growth rate for the upcoming fiscal year. In making the recommendation, the Secretary would be required to confer with organizations representing physicians. The Secretary is to consider inflation; changes in numbers of enrollees (other than Medicare Choice and HMO enrollees); changes in the age composition of enrollees; (other than Medicare Choice and HMO enrollees); changes in technology; evidence of inappropriate utilization of services; evidence of lack of access to necessary physicians services; and other factors the Secretary considers appropriate. The Physician Payment Review Commission would review the recommendation and make its recommendation to Congress by May 15. The Secretary would be required to publish the sustainable growth rate published in the last 15 days of October of that year. For 1997, the Secretary would be required to publish the sustainable growth rate as specified in the law by January 1, 1997.

The provision would replace the MVPS with a sustainable growth rate beginning for FY 1996. The provision would establish the sustainable growth rate for FY 1996 based on: (I) changes in the MEI, (ii) changes in Medicare enrollment (excluding Medicare Choice and HMO enrollees), (iii) growth in the real gross domestic product from FY 95 to FY 96 plus 2 percentage points; and (iv) changes resulting from changes in law (determined without taking into account changes in volume or intensity or changes resulting from changes in the calculation of the conversion factor update). For each subsequent fiscal year beginning in 1997, the sustainable growth rate would equal the previous year's rate, updated by the same factors used to set the FY 96 rate.

b. Conversion Factor Update. The provision would require the Secretary by April 15 of each year (beginning in 1996) to transmit a report to Congress that includes a recommendation on the appropriate update in the conversion factor taking into account the change in the MEI; factors that enter into the calculation of the update adjustment factor and access to services. The Secretary may also consider unexpected changes made by physicians in response to implementation of the fee schedule, unexpected changes in outlay projections, changes in the quality or appropriateness of care, any other relevant factors not measured in the resource based payment methodology; and changes in the volume or intensity of services. The Physician Payment Review Commission would be required to review the report and submit its recommendations to Congress by May 15.

Unless The Congress otherwise provided, the update for a year (beginning in 1997) would be determined under a modified update calculation. The provision would specify that the update for a year would equal the MEI, subject to an adjustment to match the cumulative sustainable growth rate. Specifically, the update for a year would equal the MEI, plus or minus the difference between the percentage increase in actual physician spending for the 12-month period ending the previous June compared to the allowable growth rate for the year. The allowable growth rate would be based on the cumulative sustainable growth rate from the base year 1995. If spending was below the cumulative sustainable growth rate, the update would be larger than the MEI; if spending exceeded the cumulative sustainable growth rate, the update would be less than the MEI. However, limits would be established on allowable variation from the MEI. The update could not be more than 103 percent of the MEI or less than 93 percent of the MEI.

c. Single Conversion Factor. The provision would provide for the establishment of a single conversion factor, rather than three conversion factors, effective January 1, 1996. It would set the factor for 1996 at $35.42.

Conference agreement

The conference agreement includes the Senate provision with a clarification of one of the factors used to the calculate the sustainable growth rate for FY 1997 and subsequent years. The factor for changes resulting from changes in law must include changes made by the Secretary in response to the failsafe provision. The provision further clarifies that the recommendations are to be made by the Medicare Payment Review Commission rather than the Physician Payment Review Commission.

It is the conferees understanding that HCFA has commissioned a study of practice expenses. The conferees intend that the Secretary consider analyzing the codes for portable x-ray/EKGs and transportation separately in this cost study to ensure fair and accurate evaluation of such resource-based practice expenses.

2. ELIMINATION OF FORMULA-DRIVEN OVERPAYMENTS FOR CERTAIN OUTPATIENT HOSPITAL SERVICES (SEC. 15602 OF HOUSE BILL; SEC. 7042 OF SENATE BILL)

Current law

Medicare payments for hospital outpatient ambulatory surgery, radiology, and other diagnostic services equals the lesser of: (1) the lower of a hospital's reasonable costs or its customary charges, net of deductible and coinsurance amounts, or (2) a blended amount comprised of a cost portion and a charge portion, net of beneficiary cost-sharing. The cost portion of the blend is based on the lower of the hospital's costs or charges, net of beneficiary cost sharing, and the charge portion is based, in part, on ambulatory surgery center payment rates, net of beneficiary coinsurance.

A hospital may bill a beneficiary for the coinsurance amount owed for the outpatient service provided. The beneficiary coinsurance is based on 20 percent of the hospital's submitted charges for the outpatient service, whereas Medicare usually pays based on the blend of the hospital's costs and the amount paid to ambulatory surgery centers for the same service. This results in an anomaly whereby the amount a beneficiary pays in coinsurance does not equal 20 percent of the program's payment and does not result in a dollar-for-dollar decrease in Medicare program payments.

House bill

The provision would require that beneficiary coinsurance amounts be deducted later in the reimbursement calculation for hospital outpatient services, so that Medicare payments for covered services would be lower. Medicare's payment for hospital outpatient services would equal the blended amount less any amount the hospital may charge the beneficiary as coinsurance for services furnished during portions of cost reporting periods occurring on or after October 1, 1995.

Senate bill

The provision would require that beneficiary coinsurance amounts be deducted later in the reimbursement calculation for hospital outpatient services, so that Medicare payments for covered services would be lower. Medicare's payment for hospital outpatient services would equal the blended amount less any amount the hospital may charge the beneficiary as coinsurance for services furnished during portions of cost reporting periods occurring on or after October 1, 1995.

Conference agreement

The conference agreement includes the Senate provision.

3. DURABLE MEDICAL EQUIPMENT (DME) (SEC. 15603 OF HOUSE BILL; SEC. 7044 AND 7045 OF SENATE BILL)

Current law

a. Freeze in DME Updates. DME is reimbursed on the basis of a fee schedule. Items are classified into five groups for purposes of determining the fee schedules and making payments: (1) inexpensive or other routinely purchased equipment (defined as items costing less than $150 or which is purchased at least 75 percent of the time); (2) items requiring frequent and substantial servicing; (3) customized items; (4) oxygen and oxygen equipment; and (5) other items referred to as capped rental items. In general, the fee schedules establish national payment limits for DME. The national limits have floors and ceilings. The floor is equal to 85 percent of the weighted median of local payment amounts and the ceiling is equal to 100 percent of the weighted median of local payment amounts. Fee schedule amounts are updated annually by the consumer price index for all urban consumers, CPI-U. OBRA 93 changed the basis for the floors and ceiling for the DME fee schedules from the weighted average to the weighted median, effective January 1, 1994.

b. Freeze in Orthotics and Prosthetics Update. Prosthetics and orthotics are reimbursed on the basis of a fee schedule. Items covered by this fee schedule include leg, arm, and neck braces, artificial limbs and eyes, and items that replace all or part of an internal body organ. The fee schedule establishes regional payment limits for covered items. The regional limits have floors and ceilings. The floor is equal to 90 percent of the weighted average of local payment amounts and the ceiling is equal to 120 percent of the weighted average of local payment amounts. Fee schedule amounts are updated annually by CPI-U. OBRA 93 eliminated updates for prosthetics and orthotics for 1994 and 1995.

c. Oxygen and Oxygen Equipment. Oxygen and oxygen equipment is paid according to a DME fee schedule.

d. Upgraded DME. If a beneficiary wishes to purchase a more expensive or upgraded DME item or supply, the beneficiary must make full payment to the supplier and submit a claim to Medicare for reimbursement of the amount of the approved standard item. For approved items, on the other hand, the beneficiary pays suppliers only the 20 percent coinsurance required for the covered item, and the supplier bills Medicare for the remaining 80 percent of the approved fee schedule amount.

e. Freeze for Parenteral and Enteral Nutrients (PEN), Supplies, and Equipment. Parenteral and enteral nutrients, supplies, and equipment are paid on the basis of the lowest reasonable charge levels at which items are widely and consistently available in the community. OBRA 93 froze 1994 and 1995 reasonable charge payments for PEN at 1993 levels.

House bill

a. Freeze in DME Updates. The 1 provision would eliminate updates to the DME fee schedules for the period 1996 through 2002.

b. Freeze in Orthotics and Prosthetics Update. The update for prosthetics and orthotics would be limited to 1 percent for each of years 1996 through 2002.

c. Oxygen and Oxygen Equipment. The provision would reduce in 1996 the national payment limit for oxygen and oxygen equipment by 20 percent.

d. Upgraded DME. The provision would authorize payment for upgraded DME to be made in the same manner as payment for a standard item, with the supplier receiving payment for the item as if it were a standard item and the beneficiary paying the difference between the supplier's charge and the amount paid by Medicare. The supplier's charge for an upgraded item could not exceed the applicable fee schedule amount (if any) for the item. The Secretary would be required to issue regulations providing for consumer protection standards for upgraded DME. These regulations would be required to provide for full disclosure by the supplier of the availability and price of standard items and proof of disclosure to the beneficiary; conditions of participation for suppliers of upgraded items, including conditions relating to billing procedures; sanctions (including exclusion) of suppliers who are determined to have engaged in coercive or abusive practices; and such other safeguards as the Secretary determines necessary.

e. Freeze for Parenteral and Enteral Nutrients (PEN), Supplies, and Equipment. Payments for PEN would be frozen at 1993 levels for the period 1996 through 2002.

Senate bill

a. Freeze in DME Updates. The provision would eliminate updates to the DME fee schedules for the period 1996 through 2002.

b. Freeze in Orthotics and Prosthetics Update. The update for prosthetics and orthotics would be eliminated for the period 1996 through 2002.

c. Oxygen and Oxygen Equipment. The provision would reduce in 1996 the national payment limit for oxygen and oxygen equipment by 40 percent.

d. Upgraded DME. The provision would authorize payment for upgraded DME to be made in the same manner as payment for a standard item, with the supplier receiving payment for the item as if it were a standard item and the beneficiary paying the difference between the supplier's charge and the amount paid by Medicare. The supplier's charge for an upgraded item could not exceed the applicable fee schedule amount (if any) for the item. The Secretary would be required to issue regulations providing for consumer protection standards for upgraded DME. These regulations would be required to provide for full disclosure by the supplier of the availability and price of standard items and proof of disclosure to the beneficiary; conditions of participation for suppliers of upgraded items, including conditions relating to billing procedures; sanctions (including exclusion) of suppliers who are determined to have engaged in coercive or abusive practices; and such other safeguards as the Secretary determines necessary.

e. Freeze for Parenteral and Enteral Nutrients (PEN), Supplies, and Equipment. Payments for PEN would be frozen at 1993 levels for the period 1996 through 2002.

Conference agreement

a. Freeze in DME Updates. The conference agreement includes the Senate provision.

b. Freeze in Orthotics and Prosthetics Update. The conference agreement includes the House provision.

c. Oxygen and Oxygen Equipment. The conference agreement includes the House provision with an amendment to reduce the national payment limit for oxygen and oxygen equipment by 20 percent in 1996, 21⅔ percent in 1997, 23⅓ percent in 1998, 25 percent in 1999, 26⅔ percent in 2000, 28⅓ percent in 2001, and 30 percent in 2002.

d. Upgraded DME. The conference agreement does not include either provision.

e. Freeze for Parenteral and Enteral Nutrients (PEN), Supplies, and Equipment. The conference agreement includes the Senate provision.

The conferees are concerned that there are no specific on-going quality or service standards required of a durable medical equipment provider. The conferees strongly encourage the Secretary to implement a process to establish quality standards for DME.

4. PAYMENTS FOR CLINICAL LABORATORY TESTS (SEC. 15604 OF HOUSE BILL; SEC. 7043 OF SENATE BILL)

Current law

Medicare pays for clinical laboratory services on the basis of areawide fee schedules which are periodically updated. There is no update for 1994 and 1995. In addition, the law establishes a ceiling on payment amounts. In 1995, this ceiling is set at 80 percent of the median of all fee schedules for the test; in 1996 and subsequent years the ceiling is set at 76 percent of the national median. No beneficiary cost-sharing is required.

House bill

a. Update. The provision would provide for no update in the fee schedules through 2002.

b. Cap. The provision would lower the ceiling on payment amounts to 65 percent of the median, effective January 1, 1997.

c. Study. No provision.

Senate bill

a. Update. The provision would provide for no update in the fee schedules through 2002.

b. Cap. The provision would lower the ceiling on payment amounts to 65 percent of the median, effective January 1, 1997.

c. Study. The provision would require the Secretary to conduct a study of the laboratory fee schedule and the options for rebasing or otherwise revising the payment amounts, taking into account the amounts paid for services by other large payers. A report on the study is to be submitted to Congress within one year of enactment.

Conference agreement

a. Update. The conference agreement includes the Senate provision.

b. Cap. The conference agreement includes the Senate provision.

c. Study. The conference agreement does not include the Senate provision.

5. EXTENSION OF REDUCTIONS IN PAYMENTS FOR COSTS OF HOSPITAL OUTPATIENT SERVICES (SEC. 15605 OF HOUSE BILL; SEC. 7046 AND 7047 OF SENATE BILL)

Current law

a. Capital-Related Costs. Hospitals receive payments for Medicare's share of capital costs associated with outpatient departments. OBRA 93 extended a 10 percent reduction in payments for the capital costs of outpatient departments through FY 1998.

b. Non-Capital-Related Costs. Certain hospital outpatient services are paid on the basis of reasonable costs. OBRA 93 extended a 5.8 percent reduction for those services paid on a cost-related basis through FY 1998.

House bill

a. Capital-Related Costs. The provision would extend the 10 percent reduction in payments for outpatient capital through FY 2002.

b. Non-Capital-Related Costs. The 5.8 percent reduction for outpatient services paid on a cost basis would be extended through FY 2002.

Senate bill

a. Capital-Related Costs. The provision would reduce payments for outpatient capital by an additional 5 percent for FY 1996–1998 (above OBRA 93's 10 percent reduction) and reduce capital payments by 15 percent for FY 1999–2002.

b. Non-Capital-Related Costs. The 5.8 percent reduction for outpatient services paid on a cost basis would be extended through FY 2002.

Conference agreement

a. Capital-Related Costs. The conference agreement includes the House provision.

b. Non-Capital-Related Costs. The conference agreement includes the House provision.

6. FREEZE IN PAYMENTS FOR AMBULATORY SURGICAL CENTER SERVICES (SEC. 15606 OF HOUSE BILL; SEC. 7048 OF SENATE BILL)

Current law

Medicare pays for ambulatory surgical center (ASC) services on the basis of prospectively determined rates. These rates are updated annually by CPI–U. OBRA 93 eliminated updates for ASCs for FY 1994 and FY 1995.

House bill

The provision would eliminate the inflation update for ASCs for each of the fiscal years 1996 through 2002.

Senate bill

The provision would eliminate the inflation update for ASCs for each of the fiscal years 1996 through 2002.

Conference agreement

The conference agreement includes the Senate provision.

7. RURAL EMERGENCY ACCESS CARE HOSPITALS (SEC. 15607 OF THE HOUSE BILL; SEC. 7073(C)(1) OF SENATE BILL)

Current law

See *II. Medicare Part A, item 2* above.

House bill

The provision would make conforming amendments to Part B.

Senate bill

The provision would make conforming amendments to Part B.

Conference agreement

The conference agreement includes the House provision.

8. PAYMENTS FOR ANESTHESIA SERVICES (SEC. 15608 OF HOUSE BILL, SEC. 7050 OF SENATE BILL)

Current law

a. Payment for Jointly Furnished Services. The law specifies how payment amounts are to be determined when anesthesia services are furnished by an anesthesiologist practicing alone and when an anesthesiologist is medically directing or medically supervising two to four certified registered nurse anesthetists (CRNAs). When an anesthesiologist and a CRNA are involved in a single case and no exceptional medical requirement exists, only the anesthesiologist is reimbursed.

b. Physician Supervision of CRNAs. Reimbursement for CRNA services is conditioned on physician supervision.

House bill

a. Payment for Jointly Furnished Services. The provision would specify how payments are to be calculated when services for a single case are furnished jointly by a physician and a CRNA and the carrier determines that the use of both the physician and the CRNA are not medically necessary. In 1996 and 1997, the fee schedule amount for the physician's services are to equal 55% of the amount that would be paid if the physician were practicing alone. In 1998 and subsequent years, the amount paid would equal 50% of the amount that would be paid if the physician were practicing alone. The amount paid to the CRNA would equal 40% of the amount that would otherwise be paid to a physician practicing alone in 1996 and 1997 and 50% in subsequent years.

b. Physician Supervision of CRNAs. No provision.

Senate bill

a. Payment for Jointly Furnished Services. No provision.

b. Physician Supervision of CRNAs. The provision would require the Secretary to revise any regulations describing conditions under which payment may be made for anesthesia services in a hospital or ambulatory surgical center. The revision would defer to

State law in determining whether physician supervision of CRNAs is required as a condition of payment.

Conference agreement

a. Payment for Jointly Furnished Services. The conference agreement includes the House provision.

b. Physician Supervision of CRNAs. The conference agreement does not include the Senate provision.

9. STATEWIDE FEE SCHEDULE AREA FOR PHYSICIANS SERVICES IN WISCONSIN (SEC. 15609 OF HOUSE BILL)

Current law

No provision

House bill

The provision would require the Secretary to treat the State of Wisconsin as a single fee schedule area for physicians services beginning in 1997. The provision would be implemented in a budget neutral fashion. Nothing in the section is to be construed as limiting the availability to the Secretary, the contractor or the physicians in the State of otherwise applicable administrative procedures for subsequently modifying the fee schedule areas.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

10. PAYMENTS FOR AMBULANCE SERVICES (SEC. 15609A OF HOUSE BILL; SEC. 7049 OF SENATE BILL)

Current law

Payments for ambulance services are based on reasonable charge screens developed by individual carriers based on local billings (which may take a variety of forms). Based on these local billing methods, carriers develop screens for one or more of the following main billing methods: (i) a single all-inclusive charge reflecting all services and supplies, and mileage; (ii) one charge reflecting all services and supplies, with separate charge for mileage; (iii) one charge for all services and mileage, with separate charges for supplies; and (iv) separate charges for services, mileage, and supplies. Within each broad payment method, additional distinctions are made based on whether the service is basic life support or advanced life support service, whether emergency or nonemergency transport was used, and if specialized advanced life support services were rendered.

House bill

a. Payment Amount. The provision would specify that beginning January 1,1998, payment for ambulance services would equal 80% of the lesser of the actual charge for the service or the fee schedule amount.

b. Fee Schedule. The provision would require the Secretary to establish a fee schedule through a negotiated rulemaking process. In establishing a fee schedule, the Secretary would be required to: (i) establish mechanisms to control increases in expenditures which fairly reflect the changing nature of the ambulance service industry; (ii) establish definitions for ambulance services which promote efficiency and link payments (including fees for assessment and treatment services) to the type of services provided; (iii) take into account regional differences which affect cost and productivity, including differences in the costs of resources and the costs of uncompensated care; (iv) apply dynamic adjustments to payment rates to account for inflation, demographic changes in the population of Medicare beneficiaries, and changes in the number of participating providers; (v) phase-in the application of the payment rates in an efficient and fair manner.

The provision would require the Secretary to implement the provision in 1998 in a budget neutral fashion. Beginning in 1999, the payment amounts under the fee schedule would equal the previous year's payment amount updated by the increase in the consumer price index for the 12-month period ending the previous June.

The provision would require the Secretary to regularly consult with the following groups when establishing the fee schedule: American Ambulance Association, the National Association of State Medical Directors, and other national organizations representing individuals and entities who furnish or regulate ambulance services. The Secretary in establishing the fee schedule would be required to share with the associations and organizations the data and data analysis used in establishing the fee schedule, including data on variations in payments for years prior to 1998 among geographic areas and types of providers.

Senate bill

a. Payment Amount. The provision would provide that when determining the reasonable cost or charge of ambulance services for fiscal years 1996 through 2002, the Secretary could not recognize any costs in excess of those recognized as reasonable in fiscal year 1995.

b. Fee Schedule. No provision.

Conference agreement

a. Payment Amount. The conference agreement includes the Senate provision.

b. Fee Schedule. The conference agreement does not include the House provision.

11. STANDARDS FOR PHYSICAL THERAPY SERVICES FURNISHED BY PHYSICIANS (SEC. 15609B OF HOUSE BILL)

Current law

No provision.

House bill

The provision would prohibit payment under Medicare for physicians services consisting of outpatient physical therapy services or outpatient occupational therapy services if such services are furnished by a physician who does not meet the requirements specified in the law for such services when furnished by a clinic or rehabilitation agency.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

B. BENEFICIARY PAYMENTS

1. EXTENSION OF PART B PREMIUM (SEC. 15611 OF HOUSE BILL; SEC. 7052 OF SENATE BILL)

Current law

When Medicare was established in 1965, the Part B monthly premium was set at a level to finance one-half of Part B program costs. Beginning in 1974, however, Congress limited the percentage increase in the premium to the same percentage by which Social Security cash benefits were adjusted for changes in cost of living (i.e. cost-of-living adjustments or COLAs). Under this formula, revenues from premiums soon dropped from 50 percent to below 25 percent of program costs. This was because Part B program costs increased much faster than inflation as measured by the Consumer Price Index on which the Social Security COLA is based.

Since the early 1980s, Congress has regularly voted to set Part B premiums at a level to cover 25 percent of program costs, in effect overriding the COLA limitation. The 25 percent provision first became effective January 1, 1984. General revenues cover the remaining 75 percent of Part B program costs. Congress took this general approach again in the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), but instead of leaving the calculations to the Secretary, the law set specific premium amounts for each year, 1991–1995, based on estimates of the program's costs. For 1995, the Part B premium is set at $46.10 per month. Part B program cost estimates have since proven to be too large, and the 1995 premium is now projected to cover approximately 31.5 percent of program costs. Most recently, OBRA 93 extended the policy of setting the Part B premium at a level to cover 25 percent of program costs through 1998, leaving the calculations to the Secretary. This would mean that the 1996 premium would be lower than the 1995 premium. Under current law, the provision limiting the annual percentage increase to the percentage increase in the social security COLA would again apply, beginning in 1999.

House bill

The provision would permanently set the Part B premium at 31.5 percent of program costs, beginning in 1996.

Senate bill

The provision would set the Part B premium at the following levels for the years 1996–2002: $53 in 1996, $57 in 1997, $61 in 1998, $66 in 1999, $74 in 2000, $80 in 2001, and $89 in 2002.

Conference agreement

The conference agreement includes the House provision.

2. INCOME-RELATED PART B PREMIUM (SEC. 15612 OF HOUSE BILL; SEC. 7053 OF SENATE BILL)

Current law

Under current law, all beneficiaries, regardless of income pay the same Part B premium. The remaining costs of the Part B program are paid from Federal General revenues.

House bill

a. Amount. Under the provision, individuals with incomes over $75,000 and couples with incomes over $125,000 would be responsible for increases in the Part B premium. The Federal subsidy would be gradually phased out. Individuals with incomes at $100,000, couples (with one spouse enrolled in Part B) with incomes at $150,000, and couples (with both spouses enrolled in Part B) with incomes at $175,000 would be required to pay a premium equal to 100 percent of Part B program costs. The provision would apply to monthly Part B premiums beginning in 1997.

b. Administration. The Secretary of DHHS would be required to make an initial determination of the amount of an individual's actual adjusted gross income (AGI) for a year. The determination would be based on information supplied by the Secretary of the Treasury. Not later than October 1 of the preceding year, the Secretary would be required to notify each individual subject to an increased premium. The notice would include the Secretary's estimate of the individual's AGI for the year. The individual would have a 30-day period (beginning with the date on which the notice is provided) to provide information on the individual's anticipated AGI for the forthcoming year.

The Secretary would be required to make a premium adjustment if he or she determined (based on information provided by the Secretary of the Treasury) that actual AGI was different from the amount initially determined. The adjustment would be made to the subsequent year's premium to adjust for any overpayments or underpayments in the previous year. The Secretary would be authorized to make appropriate recovery efforts in the case of an individual who owed an additional amount, but was not enrolled in Part B in such subsequent year. The Secretary would also be authorized, in the case of a deceased individual, to make a payment to the surviving spouse, or an individual's estate, in the case of overpayments to the program.

The provision would generally define AGI as such term is used in the tax code. The determination of AGI would be made without regard to the provisions in the code relating to: income from U.S. savings bonds used to pay higher education costs; income for persons living abroad; and income from sources within the U.S. possessions and Puerto Rico. The definition of AGI would include interest income which is exempt from Federal taxes.

The provision would authorize the Secretary of the Treasury, upon written request from the Secretary of DHHS, to disclose to officers and employees of the Health Care Financing Administration (HCFA) return information for taxpayers required to pay a monthly Part B premium. The information would be limited to: taxpayer identity information, filing status, AGI, amounts excluded from gross income (under provisions relating to savings bonds used to pay higher education costs and citizens or residents living abroad); tax-exempt interest income to the extent such information is available; and amounts excluded from gross income (under provisions relating to income from sources within the U.S. possessions and Puerto Rico) to the extent such information is available. The information disclosed to HCFA could only be used for purposes of establishing the monthly Part B premium.

Senate bill

a. Amount. Under the provision, individuals with incomes over $50,000 and couples with incomes over $75,000 would be responsible for increases in the Part B premium. The Federal subsidy would be gradually phased out. Individuals with incomes at $100,000, couples with incomes at $150,000 would be required to pay a premium equal to 100 percent of Part B program costs. The provision would apply to monthly Part B premiums beginning in 1997.

b. Administration. Medicare enrollees would declare during the annual open enrollment period or during an enrollment period applicable to a specific individual, an estimate of their AGI for the forthcoming year. If an individual does not file an enrollment form for an enrollment period (and the individual's coverage therefore continues without modification), the AGI would be determined on the basis of the most recent available information. If the Secretary determines that an individual has filed incorrect information, based on information from the Secretary of the Treasury, the Secretary shall use the information obtained from the Secretary of the Treasury.

The Secretary would be required to notify the Social Security Administration of the amount of premium to be deducted from each enrollees check. The premium would be effective in the month in which the enrollment was effective or the month in which the notice was received, whichever was later.

The difference, if any, between the amount of the premium owed and the amount paid in a year would be reconciled in conjunction with the annual income tax filing process. If an additional amount was owed, a separate payment would be made to the Secretary, together with any interest owed. In the case of overpayments, the Secretary would credit the excess against any supplemental premium required or make a payment to the individual. The Secretary would also be authorized to make further adjustments, if required, based on information received from the Secretary of the Treasury.

The provision would generally define AGI as such term is used in the tax code. The determination of AGI would be made without regard to the provisions in the code relating to: income from U.S. savings bonds used to pay higher education costs; income for persons living abroad; and income from sources within the U.S. possessions and Puerto Rico. The definition of AGI would include interest income which is exempt from Federal taxes.

The provision would authorize the Secretary to enter into agreements with the Commissioner of Social Security or the head of any other appropriate Federal agency which performs administrative responsibilities under this section.

The provision would require the Secretary of the Treasury, upon written request from the Secretary of DHHS, to disclose whether or not and the amount by which an individual's AGI exceeds the minimum level subject to supplemental premiums. Return information could only be used by officers and employees of DHHS (or any other Federal agency with which an agreement was in effect) for the purpose of establishing an individual's correct supplemental premium amount.

Conference agreement

a. Amount. The conference agreement includes the House provision.

b. Administration. The conference agreement includes the House provision with a technical amendment. Individuals would be permitted to pay the Secretary if the amount of the estimated AGI is too low and results in a portion of the required premium not being deducted from the beneficiary's social security check.

It is the conferees intent that the Secretary of HHS not obtain any income-related information that is not necessary for the determination of the increase in the monthly premium.

3. PART B DEDUCTIBLE (SEC. 7051 OF SENATE BILL)

Current law

Beneficiaries enrolled in Part B must pay the first $100 each year of the programs recognized costs or charges for covered services.

House bill

No provision.

Senate bill

The provision would increase the deductible to $150 in 1996 and increase it by $10 each year thereafter.

Conference agreement

The conference agreement does not include the Senate agreement.

C. OTHER PROVIDER-RELATED PROVISIONS

1. ADMINISTRATION OF LABORATORY SERVICES (SEC. 15621 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would require the Secretary to adopt uniform coverage, administration and payment policies for clinical diagnostic laboratory tests within one year of enactment. The Secretary would be required to select 15 carrier medical directors to develop recommendations to the Secretary for such policies. The directors would be representative of geographic areas and have a varied range of interest in relevant fields including pathology and clinical laboratory practice. The directors would be required to consult with independent experts in each major discipline of clinical laboratory medicine (including clinical laboratory personnel, bioanalysts, pathologists, and practicing physicians). The medical directors would also solicit comments from other individuals and groups wishing to participate. The provision would provide that the process would be conducted as negotiated rule-making as provided under the Administrative Procedures Act.

The provision would provide that the negotiated rule-making would result in recommendations for uniform policies in the following areas: (I) beneficiary information required to be submitted with each claim; (ii) physicians' obligations regarding documentation and record keeping; (iii) procedures for filing claims and for providing remittances electronically; (iv) performance of post-payment review; (v) prohibition of documentation of medical necessity except where determined to be appropriate after identification of aberrant medical patterns through focused medical review; and beneficiary responsibility for payment.

The provision would prohibit carriers and intermediaries from implementing any new requirements for submission of claims retroactive to January 1, 1995 during the period when the Secretary is adopting new policies. Further, carriers would be prohibited from issuing new coverage, administration or payment policies unless they promote the goal of administrative simplification.

The provision would require the medical directors to forward their recommendations to the Secretary within six months of enactment. The Secretary would provide for publication of recommendations for public comment using negotiated rule-making. The Secretary would publish final uniform policies which would become effective 180 days following publication. Following publication, the Secretary would implement uniform documentation and processing policies.

The provision would permit any independent laboratory to select one carrier for processing all of its claims for payment regardless of where the laboratory, patient, or provider resides or conducts business. The election would be made by the laboratory and an agreement between the carrier and the laboratory would be forwarded to the Secretary. No laboratory would be required to select a single carrier.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

2. DIRECT BILLING FOR LABORATORY SERVICES (SEC. 15622 OF HOUSE BILL)

Current law

In general, payment may only be made under Medicare to persons or entities who perform or personally supervise the performance of a laboratory test. This is known as direct billing. Payment may be made to a physician with whom the physician performing the test shares a practice.

A limited exception to the direct billing requirement is provided for referring labs. A referring lab may bill for tests performed by another lab only if one of the following three conditions are met: (1) the referring laboratory is located in or is part of a rural hospital; (2) the referring laboratory is wholly-owned by the entity performing the test, the referring lab wholly-owns the entity performing the test; or both entities are wholly-owned by a third entity; or (3) not more than 30 percent of the clinical diagnostic tests for which the referring laboratory (not described in paragraph (2)) receives requests for testing during the year are performed by another laboratory.

House bill

The provision would establish a direct billing requirement for labs. Any person collecting amounts in violation of the requirement would be liable for the amounts. Any person that furnished clinical lab services for which payment is made under Medicare's clinical laboratory fee schedules would be subject to a penalty of $10,000 for each violation. The Secretary would be authorized to exclude from participation in any Federal health care program any individual the Secretary determined had repeatedly violated the direct billing requirement. A Federal health program would be defined as any plan or program that provides health benefits, whether directly, through insurance or otherwise, which is funded in whole or in part by the U.S. Government. Also included are State Medicaid programs, maternal and child health block grant and social services block grant programs.

The Secretary would also be authorized to suspend, revoke, or limit a laboratory's certification under the Clinical Laboratory Improvement Act if it violated the direct billing requirement on a repeated basis. The lab would be given reasonable notice and opportunity for hearing before such action was taken.

The provision would require the Secretary, on July 31, 1999, to prepare an actuarial estimate to determine whether the cost of clinical lab services under Medicare for the FY 1997–FY 2002 period were expected to be at least three percent less than projected on enactment. If not, the Secretary would be required to adjust the payment ceiling (set under the bill at 65% of the national median) in fiscal years 2000, 2001 and 2002 to achieve the requisite savings by September 30, 2002. The Congressional Budget Office would be required to make its own 1999 estimate.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

3. RECOMMENDATIONS FOR QUALITY STANDARDS FOR DURABLE MEDICAL EQUIPMENT (DME) (SEC. 15631 OF HOUSE BILL)

Current law

No provision.

House bill

The Secretary of DHHS would be required to establish a broadly based task force to develop recommendations for quality standards for DME covered under Part B. The Secretary would be required to include on the task force representatives of DME suppliers, consumers, and other users of equipment, and would also be required to assure representation from various geographic regions. The task force would be required to submit its recommendations for quality standards not later than 1 year after enactment.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

SUBTITLE H—PROVISIONS RELATING TO MEDICARE PARTS A AND B

A. HOME HEALTH SERVICES

1. PROSPECTIVE PAYMENT FOR HOME HEALTH SERVICES (SEC. 15701 OF HOUSE BILL; SEC. 7061 OF SENATE BILL)

Current law

In provisions contained in the Orphan Drug Act of 1993, OBRA 87 and OBRA 90, Congress required the Secretary to develop alternative methods for paying for home health care on a prospective basis. In 1994, the Office of Research and Demonstration in the Health Care Financing Administration (HCFA) completed a demonstration project that tested prospective payment on a per visit basis. Preliminary analysis indicates that the per visit prospective payment methodology had no effect on cost per visit or volume of visits. HCFA has begun a second project, referred to as Phase II, to test prospective payment on a per episode basis.

House bill

The proposal would establish a prospective payment system for home health services. This system would be based on prospectively determined per visit rates that are subject to per episode limits applied in the aggregate. The proposal would have the following specific components.

Beginning in FY 1997, the Secretary would be required to establish national average per visit rates for each of the home health service disciplines covered under Medicare—skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide services. The per visit rates would be based on amounts paid during cost reporting periods ending June 30, 1994, updated by the home health market basket for fiscal years 1995 through 1997. The home health market basket is currently used to update cost limits. To reflect regional differences in the costs of providing services, the labor-related portion of the per visit rates would be adjusted by the hospital wage index. These adjusted per visit rates would be the amounts that home health care agencies would receive throughout the year for each of the particular mix of visits provided to a given home health care beneficiary.

Per visit rates would be subject to a per episode limit. The Secretary would calculate separate per episode limits for each of 18 different case categories of home health care. These 18 categories would be the same as those being used in HCFA's Phase II demonstration (or an alternative methodology developed by the Secretary), and would serve as a substitute for a true case-mix adjustment not yet available. The per episode limit for a category would cover all care provided to a beneficiary during a period of 120 days. No new episode of care would be recognized for reimbursement purposes until after a beneficiary has been discharged for a period of 60 days.

The per episode limit would be calculated as follows. For each of the 18 case categories, the Secretary would determine the mean number of visits of each type of home health services furnished during a period of 120 days following the initial admission of the beneficiary to the case during the base year FY 1994. The Secretary would then multiply the results by the per visit payment rates for services. This would become the target per episode limit for a case. Calculation of per episode limits would be done on an areawide basis; for these purposes the area in which an agency is located would be that area the Secretary finds most appropriate.

Each agency would be paid per visit payments throughout the year. At the end of the year, an agency's *aggregate* limit would be calculated by first multiplying the Secretary's regional target per episode limit for each of the 18 case categories times the number of episodes admitted by an agency to each of the 18 categories. The sum of these products becomes the agency aggregate payment limit.

Total per visit payments to an agency would be compared with the aggregate payment limit, i.e. the mix of an agency's episodes times the per episode limits. For these purposes, all visits provided during the first 165 days of care per episode would be counted against an agency's aggregate limit. If total payments for the year are below the agency's aggregate payment limit, then agencies would be allowed to retain 50 percent of the difference, up to 5 percent of an agency's aggregate Medicare payments in a year. For agencies with aggregate payments over the limit, the Secretary would be required to reduce payments to agencies in the following fiscal year in a manner the Secretary considers appropriate (including on an installment basis).

If a beneficiary continues to need home health visits after a period of 165 days, then an agency may request that additional payments be made on a per visit basis. These payments would not be subject to the aggregate limit. In order for fiscal intermediaries to approve such requests, agencies would be required to submit a physician's certification of the continuing need for care, as well as the reason for the need for additional visits, and a description of services to be furnished during the visits.

Beginning in FY 1998, per visit payment rates would be updated annually by the home health market basket minus 2 percentage points. The Secretary would be required to rebase the update at least once every 5 years with the most recent available data. Beginning in FY 1999, the Secretary would also be required to revise the mean number of visits in each case category to reflect the most recently available data on number of visits per episode. To deal with case-mix "creep," the Secretary would also be required to adjust per episode limits to assure that aggregate payments in a year do not exceed the previous year's payments because of changes in the number and type of home health visits within each episode.

The Secretary would be required to implement a medical review process for the new payment system, giving particular attention to fiscal years 1997 and 1998. The purpose of the medical review process would be to assess patterns of care to assure that beneficiaries receive appropriate services under the new prospective payment system. Medical reviews would be required to focus on short stay cases and cases over 165 days. Recertification of the need for care would have to be done at 30, 60, 90, 120, and 165 days of home health care.

The Secretary would be required make adjustments in payments to home health care agencies that circumvent the new payment system by discharging patients to another home health agency or similar provider; by altering corporate structure or name to avoid being subject to payment limits or for purposes of increasing Medicare payments; and by undertaking any other actions that are unnecessary for effective patient care and that are intended to maximize Medicare payments.

The Secretary would be required to develop a system to track home health patients who receive care from more than one agency during an episode. For such situations, the Secretary would be required to adjust payments to assure that total amounts paid to these agencies do not exceed the payment that would otherwise have been made if the patient had completed the episode in a single agency.

The Secretary would also be required to develop a system to adjust payments to agencies to eliminate any increase in growth in the percentage of low-cost episodes over the percentage of such cases occurring at the agency for the 12-month cost reporting period ending June 30, 1994. The Secretary would be required to define low-cost episode in a manner to assure that a home health agency has an incentive to be cost efficient in delivering services and that the volume of services does not increase as a result of factors other than patient needs.

Reimbursements for exceptions to the per episode limits would be limited to aggregate payments made in FY 1994 adjusted for increases in the home health market basket.

Separate Part B billings would be prohibited for any services covered under the per episode limit while the beneficiary is receiving home health services, and payment would have to be made to the home health agency, regardless of whether a service was provided by the agency, by others under arrangements with the agency, or under any other arrangement. Services would be excluded from coverage if not billed by the agency. Agencies would be required to bill prosthetics and orthotics furnished as part of a home health visit under Part B's prosthetics and orthotics fee schedule, just as durable medical equipment (DME) furnished by an agency as part of home health must now be billed under the fee schedules for DME.

Home health coverage under Medicare Part A would be limited to 165 days per spell of illness. Visits beyond this limit would be reimbursed under Part B and the Secretary would be prohibited from including these costs in the calculation of the Part B premium.

The Medicare Review Commission would be required to report on the effectiveness of the new payment system for each of the first three years of its operation. The Commission would also be required to make recommendations to Congress on (1) case-mix and volume increases, (2) quality monitoring of home health agency practices, (3) whether a capitated payment system for home health care patients using over 165 days of service is warranted; (4) whether public providers of service are adequately reimbursed; (5) the adequacy of the exemptions and exceptions to the limits; (6) the appropriateness of methods used to adjust the per episode limits and annual payment updates to reflect changes in the mix of services, number of visits, and assignment to case categories to reflect changing patterns of home health care; and (7) the geographic areas used to determine per episode limits.

Senate bill

The proposal would establish a prospective payment system for home health services. This system would be based on prospectively determined per visit rates that are subject to per episode limits applied in the aggregate. The proposal would have the following specific components.

Beginning in FY 1997, the Secretary would be required to establish national average per visit rates for each of the home health service disciplines covered under Medicare— skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide services. For FY 1997, the per visit rates would be based on amounts paid during cost reporting periods ending June 30, 1994. To reflect regional differences in the costs of providing services, the labor-related portion of the per visit rates would be adjusted by the hospital wage index. These adjusted per visit rates would be the amounts that home health care agencies would receive throughout the year for each of the particular mix of visits provided to a given home health care beneficiary.

Per visit rates would be subject to a per episode limit. The Secretary would calculate separate per episode limits for each of 18 different case categories of home health care. These 18 categories would be the same as those being used in HCFA's Phase II demonstration (or an alternative methodology developed by the Secretary), and would serve as a substitute for a true case-mix adjustment not yet available. The per episode limit for a category would cover all care provided to a beneficiary during a period of 120 days. No new episode of care would be recognized for reimbursement purposes until after a beneficiary has been discharged for a period of 60 days.

The per episode limit would be calculated as follows. For each of the 18 case categories, the Secretary would determine the mean number of visits of each type of home health services furnished during a period of 120 days following the initial admission of the beneficiary to the case during the base year FY 1994. The Secretary would then multiply the results by the per visit payment rates for services. This would become the target per episode limit for a case. Calculation of per episode limits would be done on an areawide basis; for these purposes the area in which an agency is located would be determined according to the same metropolitan statistical area/rural classification system used for the hospital wage index.

Each agency would be paid per visit payments throughout the year. At the end of the year, an agency's *aggregate* limit would be calculated by first multiplying the Secretary's regional target per episode limit for each of the 18 case categories times the number of episodes admitted by an agency to each of the 18 categories. The sum of these products becomes the agency aggregate payment limit.

Total per visit payments to an agency would be compared with the aggregate payment limit, i.e. the mix of an agency's episodes times the per episode limits. For these purposes, all visits provided during the first 165 days of care per episode would be counted against an agency's aggregate limit. If total payments for the year are below the agency's aggregate payment limit, then agencies would be allowed to retain 50 percent of the difference, up to 5 percent of an agency's aggregate Medicare payments in a year. For agencies with aggregate payments over the limit, the Secretary would be required to reduce payments to agencies in the following fiscal year in a manner the Secretary considers appropriate (including on an installment basis).

If a beneficiary continues to need home health visits after a period of 165 days, then an agency may request that additional payments be made on a per visit basis. These payments would not be subject to the aggregate limit. In order for fiscal intermediaries to approve such requests, agencies would be required to submit a physician's certification of the continuing need for care, as well as the reason for the need for additional visits, and a description of services to be furnished during the visits.

Beginning in FY 1998, per visit payment rates would be updated annually by the greater of the home health market basket minus 2.5 percentage points, or 1.1 percent (1.2 percent in FY 1997). The Secretary would be required to rebase the per visit rates with the most recent available data at least once every 2 years beginning with FY 2000. Beginning in FY 1999, the Secretary would also be required to revise the mean number of visits in each case category to reflect the most recently available data on number of visits per episode. To deal with case-mix "creep," the Secretary would also be required to adjust per episode limits for each of the fiscal years 1997–2000 to assure that aggregate payments in a year do not exceed the previous year's payments because of changes in the number and type of home health visits within each episode. In subsequent years, the Secretary would be required to adjust the limits to remove the effects of case-mix increases due to reporting improvements instead of real changes in patients' resource usage.

The Secretary would be required to implement a medical review process for the new payment system, giving particular attention to fiscal years 1997 and 1998. The purpose of the medical review process would be to assess patterns of care to assure that beneficiaries receive appropriate services under the new prospective payment system. Medical reviews would be required to focus on short stay cases and cases over 165 days. Recertification of the need for care would have to be done at 30, 60, 90, 120, and 165 days of home health care. The Secretary could use public or private organizations to conduct medical reviews.

The Secretary would be required make adjustments in payments to home health care agencies that circumvent the new payment system by discharging patients to another home health agency or similar provider; by altering corporate structure or name to avoid being subject to payment limits or for purposes of increasing Medicare payments; and by undertaking any other actions that are unnecessary for effective patient care and that are intended to maximize Medicare payments.

The Secretary would be required to develop a system to track home health patients who receive care from more than one agency during an episode. For such situations, the Secretary would be required to adjust payments to assure that total amounts paid to these agencies do not exceed the payment that would otherwise have been made if the patient had completed the episode in a single agency.

The Secretary would also be required to develop a system to adjust payments to agencies to eliminate any increase in growth in the percentage of low-cost episodes over the percentage of such cases occurring at the agency for the 12-month cost reporting period beginning during FY 1994. For these purposes, the Secretary would be required to profile each agency to determine the distribution of all episodes by length of stay and define low-cost episodes as those at the 25th percentile. The Secretary would be required to define low-cost episode in a manner to assure that a home health agency has an incentive to be cost efficient in delivering services and that the volume of services does not increase as a result of factors other than patient needs.

Reimbursements for exceptions to the per episode limits would be limited to aggregate payments made in FY 1994 adjusted for increases in the home health market basket.

Separate Part B billings would be prohibited for any services covered under the per episode limit while the beneficiary is receiving home health services, and payment would have to be made to the home health agency, regardless of whether a service was provided by the agency, by others under arrangements with the agency, or under any other arrangement. Services would be excluded from coverage if not billed by the agency. Agencies would be required to bill prosthetics and orthotics furnished as part of a home health visit under Part B's prosthetics and orthotics fee schedule, just as durable medical equipment (DME) furnished by an agency as part of home health must now be billed under the fee schedules for DME.

The Prospective Payment Assessment Commission would be required to report on the effectiveness of the new payment system for each of the first three years of its operation. The Commission would also be required to make recommendations to Congress on (1) case-mix and volume increases, (2) quality monitoring of home health agency practices, (3) whether a capitated payment system for home health care patients using over 165 days of service is warranted; (4) whether public providers of service are adequately reimbursed; (5) the adequacy of the exemptions and exceptions to the limits; (6) the appropriateness of methods used to adjust the per episode limits and annual payment updates to reflect changes in the mix of services, number of visits, and assignment to case categories to reflect changing patterns of home health care; and (7) the geographic areas used to determine per episode limits.

Conference agreement

The conference agreement includes the Senate provision with amendments. Beginning in FY 1998, per visit payment rates would be updated annually by the home health market basket minus 2 percentage points. The Secretary would be required to rebase the per visit rates with the most recently available data at least once every 5 years for cost reporting periods beginning in FY 2000. Beginning in FY 1999, the Secretary would also be required to rebase at least once every 5 years the mean number of visits furnished during an episode for each case category to reflect the most recently available data. Recertification of the need for care would be have to done at 60 and 165 days of care.

2. MAINTAINING SAVINGS RESULTING FROM TEMPORARY FREEZE ON PAYMENT INCREASE FOR HOME HEALTH SERVICES (SEC. 15702 OF HOUSE BILL; SEC. 7062 OF SENATE BILL)

Current law

Home health care agencies are currently reimbursed on the basis of reasonable costs, up to specified limits. Cost limits are determined separately for each type of covered home health service (skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide), and according to whether an agency is located in an urban or rural area. Costs limits, however, are applied to aggregate agency expenditures; that is, an aggregate cost limit is set for each agency that equals the limit for each type of service multiplied by the number of visits of each type provided by the agency. Limits for the individual services are set at 112 percent of the mean labor-related and nonlabor per visit costs for freestanding agencies. Cost limits are updated annually by applying a market basket index to base year data derived from home health agency cost reports. The labor-related portion of a service limit is adjusted by the current hospital wage index.

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) required that there be no changes in home health cost limits (including no adjustments for changes in the wage index or other updates of data) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. The Secretary was also required, when granting or extending exceptions to cost limits, to limit any exception to the amount that would have been granted if there were no restriction on changes in the cost limits. OBRA 93 also repealed the requirement that additional payments be made to hospital-based home health agencies for costs attributable to excess overhead allocations, effective for cost reporting periods beginning on or after October 1, 1993.

House bill

The provision would permanently extend the savings stream, but not the freeze, in setting future home health limits, by not allowing for the inflation that occurred during the freeze years.

Senate bill

The provision would permanently extend the savings stream, but not the freeze, in setting future home health limits, by not allowing for the inflation that occurred during the freeze years.

Conference agreement

The conference agreement includes the Senate provision.

3. EXTENSION OF WAIVER OF PRESUMPTION OF LACK OF KNOWLEDGE OF EXCLUSION FROM COVERAGE FOR HOME HEALTH AGENCIES (SEC. 15703 OF HOUSE BILL; SEC. 7063 OF SENATE BILL)

Current law

When a provider furnishes services that are not covered under Medicare, the provider is not normally entitled to Medicare payment for those services. The program, however, has recognized that circumstances may exist where providers of services or beneficiaries could not have reasonably known that services would not be covered. Medicare has paid for a limited number of services which are not covered services, so long as it is determined that the provider or beneficiary did not know and could not reasonably have been expected to know that services would be uncovered. The provider is presumed not to know that coverage for certain services would be denied—it qualifies for a “favorable presumption”—when its denial rate is below a certain level. With this favorable presumption, its liability for denied claims below the threshold is waived and it is paid for these claims. The provider receives waiver of liability protection for denied claims below the threshold.

For home health agencies, waiver of liability protection is available for two separate categories of denials. One waiver applies to medical denials, i.e., to claims that are denied because the care was not medically necessary or was determined to be custodial in nature. Another waiver applies to services determined to be noncovered because the beneficiary was not homebound or did not require intermittent skilled nursing care. These are referred to as technical denials.

For both categories, the principal criterion for meeting the favorable presumption test is a denial rate of 2.5 percent or less. Waiver of liability protection for both medical and technical denials expires December 31, 1995.

House bill

Waiver of liability for home health agencies would be extended through September 30, 1996.

Senate bill

Waiver of liability for home health agencies would be extended through September 30, 1996.

Conference agreement

The conference agreement includes the Senate provision.

4. REPORT ON RECOMMENDATIONS FOR PAYMENTS AND CERTIFICATION FOR HOME HEALTH SERVICES OF CHRISTIAN SCIENCE PROVIDERS (SEC. 15704 OF HOUSE BILL)

Current law

No provision.

House bill

The Secretary would be required to submit recommendations to Congress, not later than July 1, 1996, on an appropriate methodology for making payments under the Medicare program for home health services furnished by Christian Science providers who meet applicable requirements of the First Church of Christ, Scientist, Boston, and appropriate criteria for certifying these providers.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision with a modification to require that payments be made for home health services furnished by Christian Science providers. Providers must meet applicable requirements of the First Church of Christ, Scientist, and be certified under criteria established by the Secretary. Payments are to be made according to a methodology established by the Secretary. The provision is effective for services furnished during cost reporting periods which begin after the earlier of the date on which the Secretary establishes the payment methodology and certification criteria, or July 1, 1996.

5. EXTENSION OF PERIOD OF HOME HEALTH AGENCY CERTIFICATION (SEC. 15705 OF HOUSE BILL)

Current law

In order to determine compliance with requirements for participation, home health agencies must be subject to an unannounced standard survey that must be conducted not later than 15 months after the date of the previous standard survey. The average interval between standard surveys in a state must not exceed 12 months.

House bill

The provision would require that standard surveys for home health agencies be conducted not later 36 months after the date of the previous standard survey. The Secretary would be required to establish a frequency within this 36-month interval commensurate with the need to assure the delivery of quality home health services.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

B. MEDICARE SECONDARY PAYER

1. EXTENSION AND EXPANSION OF EXISTING REQUIREMENTS (SEC. 15711 OF HOUSE BILL; SEC. 7055(A)–(C) OF SENATE BILL)

Current law

Generally Medicare is the "primary payer," that is, it pays health claims first, with an individual's private or other public insurance filling in some or all of Medicare's coverage gaps. However, in certain instances, the individual's other coverage pays first, while Medicare is the secondary payer. This phenomenon is referred to as the MSP program. A group health plan offered by an employer (with 20 or more employees is required to offer workers age 65 or over (and workers spouses age 65 or over) the same group health insurance coverage as is offered to younger workers. If the worker accepts the coverage, the employer is the primary payer, with Medicare becoming the secondary payer

Similarly, a group health plan offered by a large employer (100 or more employees) is the primary payer for employees or their dependents who are on the Medicare disability program. The provision applies only to persons covered under the group plan because the employee is in "current employment status" (i.e. is an employee or is treated as an employee by the employer). The MSP provision for the disabled population expires October 1, 1998.

The MSP provisions apply to apply to end-stage renal disease (ESRD) beneficiaries with employer group health plans, regardless of employer size. The group health plan is the primary payer for 18 months for persons who become eligible for Medicare ESRD benefits. The employer's role as primary payer is limited to a maximum of 21 months (18 months plus the usual 3-month waiting period for Medicare ESRD coverage). The MSP provisions for the ESRD population expire October 1, 1998.

The law authorizes a data match program which is intended to identify potential secondary payer situations. Medicare beneficiaries are matched against data contained in Social Security Administration (SSA) and Internal Revenue Service (IRS) files to identify cases in which a working beneficiary (or working spouse) may have employer-based health insurance coverage. Cases of previous incorrect Medicare payments are identified and recoveries are attempted. The authority for the program extends through Sept. 30, 1998.

House bill

The provision would make permanent the MSP provisions for the disabled and the ESRD population. It would extend the period during which the employer group health plan is primary payer for an ESRD beneficiary from 18 to 24 months. The provision would also make permanent the data match requirement.

Senate bill

The provision would make permanent the MSP provisions for the disabled and the ESRD population. It would extend the period during which the employer group health plan is primary payer for an ESRD beneficiary to 30 months. The provision would also make permanent the data match requirement.

Conference agreement

The conference agreement includes the Senate provision.

2. PAYMENT RECOVERIES (SEC. 15712 OF HOUSE BILL)

Current law

Recent court action may lessen the effectiveness of the data match program. In many cases where recoveries are sought, claims have never been filed with the primary payer. Identification of potential recoveries under the data match process usually takes in excess of the time period most health plans allow for claims filing. Two May 1994 decisions by the U.S. Court of Appeals for the District of Columbia held certain portions of the MSP overpayment recovery procedures invalid. In particular, it held invalid provisions authorizing payment recoveries without regard to a health plan's timeliness requirements. The U.S. Supreme Court denied a HCFA petition to review the 1994 decisions.

House bill

The provision would specifically permit MSP recoveries from third party administrators of health plans, except in cases of insolvency or bankruptcy of the employer or plan. It would also permit recovery actions up to three years from the date the item or service was furnished to the beneficiary.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

3. PROHIBITION OF RETROACTIVE APPLICATION OF POLICY REGARDING ESRD BENEFICIARIES (SEC. 15713 OF HOUSE BILL; SEC. 7055(D) OF SENATE BILL)

Current law

Medicare remains the primary payer if a group health plan was already secondary for an individual entitled on the basis of age or disability when the individual becomes entitled on the basis of ESRD. Following enactment of OBRA 93, HCFA stated that the private plan would become primary in such cases. On April 24, 1995, HCFA corrected its construction of the statute; it issued guidelines stating that Medicare remains the primary payer in these cases.

House bill

The provision would specify that the policy change specified in the April 24, 1995 HCFA guidelines would only apply with respect to items and services furnished on or after such date.

Senate bill

The provision would prohibit a retroactive application of the policy. In the event age-based or disability-based Medicare entitlement preceded ESRD-based eligibility, Medicare would be the secondary payer for the period August 10, 1993 to April 24, 1995.

Conference agreement

The conference agreement does not include either provision.

C. FAILSAFE (SEC. 15721 OF HOUSE BILL)

Current law

Although the Federal Government is required by law to pay Medicare claims on behalf of eligible participants, total Medicare spending is limited in two ways: (1) by availability of reserves in the Medicare trust funds; and (2) by provisions of OBRA of 1990, P.L. 101–508. These limitations are intended to set ongoing aggregate limits on spending, not to regulate the annual rate of growth in Medicare.

Limitation created by trust fund reserves. Part A claims for hospitalization are paid from the Hospital Insurance (HI) Trust Fund. Part B claims for physicians' services are paid from the Supplementary Medical Insurance (SMI) Trust Fund. These two trust funds are accounting devices by which the Government determines the extent to which spending on Medicare claims is authorized without new legislation or appropriations. Trust fund balances represent spending authority. An insolvency in either fund would force a stoppage in Government reimbursement for Medicare claims until the fund had accrued new credits.

The sources of trust fund credits are: (1) payroll tax revenue; (2) enrollee premiums; (3) Government general fund contributions; and (4) interest on Government debt held by the funds. The earmarked revenue for the HI fund comes from a payroll tax of 1.45 percent applicable to both employees and employers. The SMI fund is credited with monthly premium payments made by Part B enrollees (currently $46.10 a month) and transfers of general Government funds. The HI fund is projected to be depleted in FY 2002. The SMI fund will not be depleted, however, since general fund transfers are credited each year in amounts sufficient to maintain the fund's solvency.

Limitation created by OBRA of 1990. A provision in OBRA of 1990 requires that legislated increases in entitlement spending and decreases in revenue be offset by entitlement decreases and/or revenue increases on a pay-as-you-go (PAYGO) basis. A violation of PAYGO rules can trigger sequestration, a process by which all budget accounts subject to sequestration are reduced by the percentage necessary to make up any spending overrun or revenue shortfall. However, the law limits the sequestration percentage that can be applied to Medicare benefits to 4.0 percent or less. These budget rules apply through FY 1998.

Sequestration has not occurred because of a PAYGO violation, but OBRA of 1990 restricted increases in certain Medicare payment rates beginning in FY 1991 as part of the budget agreement set forth by that law. Sequestration did occur in FY 1988 under an earlier law, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100–119). The sequestration percentage applied to Medicare spending was 2.0 percent, the maximum allowed for Medicare under that law. It was achieved by reducing payment rates for covered services.

House bill

1. RECOMMENDATION OF SPENDING CONTROLS

A new section 1895 would be added to Title XVIII of the Social Security Act to provide a "failsafe budget mechanism" by which certain Medicare spending would be reduced automatically if it were anticipated that spending would exceed budget targets during the next fiscal year.

2. EFFECTIVE DATE

The failsafe budget mechanism would be effective for FY 1998 and all subsequent fiscal years.

3. EXPENDITURE MEASURE SUBJECT TO CONTROL

The failsafe budget mechanism would apply to both Parts A and B of Medicare, but only to fee-for-service expenditures. Distinct limits would be specified for the following fee-for-service sectors: inpatient hospital services; home health services; extended care services; hospice care; physicians' services; outpatient hospital services and ambulatory facility services; durable medical equipment and supplies; diagnostic tests; and other items and services. The Secretary of Health and Human Services would classify each item and service paid for separately by Medicare into one of these sectors by Oct. 1, 1996.

4. MAXIMUM SPENDING LEVELS

a. Overall spending level

The total Medicare budget allotment for a fiscal year would equal the Medicare benefit budget less the payments the Secretary estimates would be made under MedicarePlus (the new Part C). The Medicare benefit budget would be set forth in law as follows:

[In billions of dollars]

Fiscal year:	*Benefit budget*
1997	208.0
1998	217.1
1999	228.4
2000	246.4
2001	265.5
2002	288.0

The benefit budget for a subsequent fiscal year would equal the benefit budget for the preceding fiscal year increased by the product of: (1) 1.05; and (2) 1.0 plus the annual percentage increase in the average number of Medicare beneficiaries in a subsequent fiscal year compared to the preceding fiscal year.

b. Limit by Sector

The budget allotment for a sector for a fiscal year would be determined by multiplying the total fee-for-service allotment for that year by an allotment proportion for each sector. This proportion would equal the ratio of (1) the baseline projection of expenditures for the sector for the year to the sum of all such baseline expenditures for all sectors for that year. Baseline projections would be determined by applying annual growth rates for each sector, as specified in the new law, to the prior year's baseline expenditure for the sector. Baseline projections for FY 1996 would equal actual FY 1995 expenditures increased by the appropriate growth rate. In subsequent years, baseline projections would be determined by applying annual growth rates for each sector, as specified in the new law, to the prior year's baseline expenditure for each sector. These fiscal year growth rates (expressed in percents) are specified as follows:

Sector	1996	1997	1998	1999	2000	2001	2002
Inpatient care	5.7	5.6	6.0	6.1	5.7	5.5	5.2
Home health care	17.2	15.1	11.7	9.1	8.4	8.1	7.9
Extended care	19.7	12.3	9.3	8.7	8.6	8.4	8.0
Hospice care	32.0	24.0	18.0	15.0	12.0	10.0	9.0
Physician services	12.4	9.7	8.7	9.0	9.3	9.6	10.1
Outpatient services	14.7	13.9	14.5	15.0	14.1	13.9	14.0
Durable equipment and supplies	16.1	15.5	13.7	12.4	13.2	13.9	14.5
Diagnostic tests	13.1	11.3	11.0	11.4	11.4	11.5	11.9
Other items and services	11.2	10.2	10.9	12.0	11.6	11.6	11.8

The growth rates shown above for FY 2002 would also apply to subsequent years.

In providing for adjustments to Medicare payments for a particular sector, the Secretary would be required to take into account the impact of the adjustment on the volume or type of services provided in that sector and any delays in payments from one year to the next that might be expected in that sector.

5. LOOKBACK SPENDING ADJUSTMENT

If the actual fee-for-service expenditures for a sector were to exceed the total allotments for the second preceding year, then the sector's allotment would be reduced for the next fiscal year by 133⅓ percent of the excess amount. Should spending in the second preceding year fall below a sector's allotment for that year, the excess allotment could be added to the allotment for the next fiscal year. These adjustments would be made after adjusting the prior-year allotments to reflect actual Part C expenditures for the second preceding year.

6. METHOD FOR SPENDING REDUCTIONS

If the Secretary determines that expenditures for a sector for a fiscal year would exceed the sector's budget allotment for that year, then Medicare payment rates applicable to that sector would be adjusted so that expenditures would be reduced by 133⅓ percent of the amount of the excess. The Secretary would be required to publish the size of any necessary adjustments and the methodology to be used by May 15 preceding the fiscal year in question. A final determination on adjustments would have to be published by September 1 prior to that year.

7. CONGRESSIONAL MODIFICATION

If the President submits a legislative proposal to revise the baseline annual growth rates specified for fee-for-service sectors, Congress would be required to consider the proposal under an expedited procedure. Passage of a joint resolution of approval would be required within 60 days of submittal for the changes to become law. Procedure for consideration of a joint resolution would be the same as that used under the Defense Base Closure and Realignment Act of 1990.

8. REQUIRED REPORTS

Beginning with the budget documents for FY 1999, the President's Budget would be required to include information on actual Medicare fee-for-service expenditures by sector for the second preceding year, with a comparison to the corresponding Medicare benefit budget and sector allotments. Data on actual annual growth rates for each fee-for-service sector would also be required.

Annual reports of the Trustees on Part A of Medicare would be required to include information on the annual rate of program expenditures that would maintain the solvency of the trust fund and the extent to which the failsafe budget mechanism restrained the expenditure growth rate.

Beginning in 1997, the Medicare Payment Review Commission would be required to submit by March 1 of each year a report analyzing the past operation of the failsafe mechanism and making recommendations with respect to its application to the following fiscal year.

Senate bill

No provision.

Conference agreement

1. RECOMMENDATION OF SPENDING CONTROLS

The conference agreement includes the House provision.

2. EFFECTIVE DATE

The conference agreement includes the House provision.

3. EXPENDITURE MEASURE SUBJECT TO CONTROL

The conference agreement includes the House provision.

4. MAXIMUM SPENDING LEVELS

a. Overall spending level

The conference agreement includes the House provision with a modification to set the levels as follows:

Fiscal year	*Benefit budget ($ billions)*
1998	217.8
1999	229.2
2000	247.2
2001	266.4
2002	289.0

b. Limit by sector

The conference agreement includes the House provision with an amendment. The limit would be applied in the aggregate, with cuts applied proportionately to excess spending sectors. modification to apply the limit in the aggregate.

5. LOOKBACK SPENDING ADJUSTMENT

The conference agreement replaces the House provision with the new provision described below.

Beginning in FY 1998, if the fee-for-service expenditures for all sectors for the second preceding fiscal year are estimated to exceed the total adjusted allotments for that year, then the current year's allotment for each sector with excess spending would be reduced by the "sector reduction amount." This sector reduction amount is defined as the product of: (1) the amount of excess spending for a sector and year; and (2) the ratio of (a) the net excess spending for all fee-for-service sectors to (b) the gross sum of excess spending in only those sectors with excess spending.

These lookback adjustments would be made after adjusting the original allotments to reflect actual Part C expenditures in the second preceding fiscal year.

6. METHOD FOR SPENDING REDUCTIONS

The conference agreement includes the House provision with the following modification. Instead of reducing an excess spending sector's payment rates to reduce spending by 133⅓ percent of the estimated excess spending amount, the sector's payment rates would be modified to achieve a 133⅓ percent reduction of that sector's "reduction target." A sector's "reduction target" is defined as the product of: (1) the amount of excess spending for the sector in the fiscal year; and (2) the ratio of (a) net excess spending for all fee-for-service sectors, to (b) the gross sum of excess spending amounts for only those sectors with excess spending in the fiscal year.

7. REQUIRED REPORTS

The conference agreement includes the House provision.

D. ADMINISTRATIVE SIMPLIFICATION (SEC. 15731 OF HOUSE BILL)

Current law

No provision.

House bill

The provision would provide for the adoption of standards for Medicare information transactions and data elements. The Secretary would be required to adopt standards which were consistent with reducing administrative costs and which were developed or modified by a standard setting organization accredited by the American National Standards Institute. The Secretary could adopt or modify a standard relating to data elements that was different from such standard if, compared to the alternative, it would substantially reduce administrative costs to providers and health plans and it was promulgated in accordance with Federal rule making procedures.

The provision would require each person who maintains or transmits Medicare information or data elements to maintain reasonable and appropriate administrative, technical, and physical safeguards to: (i) ensure integrity and confidentiality of information; and (ii) protect against any reasonably anticipated threats or hazards to security or unauthorized uses or disclosures.

The Secretary would be required to establish security standards and modifications to those standards that take into account technical capability of record systems, costs of security measures, need for training personnel who have access to information, and the value of audit trails. The standards would assure that a Medicare information network service that was part of a larger organization had policies which isolated its activities. Security standards would be based on those developed by standard setting organizations or, if such standards do not exist, by the Medicare Information Advisory Committee. The Secretary would be required to establish specifications for implementing each of the standards and modifications. The Secretary would rely on the recommendations of the Medicare Information Advisory Committee and consult with appropriate Federal and State agencies and private organizations. The Secretary would publish the recommendations of the Advisory Committee in the Federal Register.

The Secretary would be required to adopt standards for transactions and data elements to make Medicare information uniformly available to be exchanged electronically. The standards would provide for unique health identifiers for each individual, plan, employer, and provider. Penalties would be imposed for improper disclosure of this number. In addition, the Secretary would: (i) provide for the establishment of code sets in consultation with the Medicare Information Advisory Committee and other experts; (ii) promulgate regulations specifying procedures for the electronic transmission and authentication of signatures; (iii) develop rules for transfer of information between health plans needed for coordination of benefits; and (iv) develop further transaction standards if, after 5 years, they were deemed necessary for coordination of benefits. The provision would provide for protection of trade secrets.

The provision would require the development of the standards within 18 months of enactment. Additional or modified standards could be adopted not more than once every 12 months. Additions or modifications would be completed in a manner that minimized disruption and cost of compliance. Health plans would be required to conduct standard transactions in a timely manner and comply with transaction and data element standards within 24 months of adoption. Compliance with any modified standards would be required within an appropriate period but not less than 180 days after adoption of the modified standard. Penalties would be established for failure to comply with requirements and standards.

The provision would supersede any contrary provision of state law unless the Secretary determined that the provision of State law should be continued for any reason including for reasons relating to prevention of fraud and abuse or regulation of controlled substances.

The provision would establish a Medicare Information Advisory Committee to advise the Secretary in development of standards and to advise the Secretary and the Congress on the status and future of the Medicare information network. The Committee would be composed of 9 members—three appointed by the President, three appointed by the Speaker of the House, and three by the President pro tempore of the Senate. The Committee would be required to submit an annual report to the Congress which would include information on the extent to which entities using the Medicare information network were meeting the standards, forming an integrated network, and meeting security standards.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision with an amendment. The provision is incorporated in the new title C, MedicarePlus. The requirements apply to Medicare Plus and Medicare information and the advisory committee is the Medicare Plus and Medicare Advisory Committee. The National Council for Prescription Drug Program is an approved Standard Setting Organization.

E. OTHER PROVISION RELATING TO PARTS A AND B

1. CLARIFICATION OF MEDICARE COVERAGE OF ITEMS AND SERVICES ASSOCIATED WITH CERTAIN MEDICAL DEVICES APPROVED FOR INVESTIGATIONAL USE (SEC. 15741 OF HOUSE BILL)

Current law

Medicare law does not provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by the program. The law, however, provides that no payment may be made for any expenses which are not reasonable and necessary for the diagnosis or treatment of illness. While HCFA has not explicitly defined "reasonable" and "necessary" for purposes of making decisions about the appropriateness of Medicare's coverage for specific services and items, it has applied a general policy that services be safe and effective and not experimental or investigational. In 1994, HCFA clarified its coverage policy to prohibit coverage and payment of services associated with the use of investigational devices.

House bill

The provision specifies that nothing in Medicare law could be construed as prohibiting coverage of items and services associated with the use of a medical device in the furnishing of inpatient hospital services (including outpatient diagnostic imaging services) on the grounds that the device is not an approved device if (1) the device is an investigational device; and (2) the device is used instead of an approved device or a covered procedure. The amount of payment for items and services associated with the use of investigational devices in inpatient hospital services could not exceed the amount that Medicare would have paid if the item or service were associated with an approved device. The provision would define approved device as a medical device which has been approved for marketing under pre-market approval or cleared for marketing under the Federal Food, Drug, and Cosmetic Act. An investigational device would be defined as a medical device approved for investigational use under the Food, Drug, and Cosmetic Act.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

2. ADDITIONAL EXCLUSION FROM COVERAGE (SEC. 15742 OF HOUSE BILL; SEC. 7056 OF SENATE BILL)

Current law

Medicare excludes coverage for certain defined items and services.

House bill

The provision would exclude Medicare coverage for expenses associated with items or services or the purchase of health benefit coverage used for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

Senate bill

The provision would exclude Medicare coverage for expenses associated with items or services or the purchase of health benefit coverage used for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person. Medicare's requirements for providers to maintain policies and procedures for advance directives would be amended to specify that no health care provider or employee of a health care provider could be required to inform or counsel a patient regarding assisted suicide, euthanasia, mercy killing, or other service which purposefully causes the death of a person.

Conference agreement

The conference agreement does not include either provision. It is the conferees' intent that, notwithstanding any other provision of Medicare, no payment may be made under Part A or Part B for any expenses incurred for items or services where such expenses are for items or services, or to assist in the purchase, in whole or in part, of health benefit coverage that includes items or services, for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

3. COMPETITIVE BIDDING (SEC. 15743 OF HOUSE BILL)

Current law

No provision.

House bill

The Secretary would be required to operate over a 2-year period a demonstration project in two geographic regions under which payments for a selected item or service (other than clinical diagnostic laboratory tests) would be made according to a competitive bidding process. The competitive bidding process used in the demonstration would be required to meet requirements imposed by the Secretary to ensure the cost-effective delivery of items and services of high quality. The Secretary would be required to select items and services for the demonstration that would be appropriate and cost-effective, and in determining which items and services to select, the Secretary would be required to consult an advisory taskforce which includes representatives of providers and suppliers of items and services in each geographic region in which the project would be effective.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

4. DISCLOSURE OF CRIMINAL CONVICTIONS RELATING TO PROVISION OF HOME HEALTH SERVICES (SEC. 15744 OF HOUSE BILL)

Current law

No provision.

House bill

The Secretary and each State or local survey agency or other State agency responsible for monitoring compliance of home health agencies with requirements for participation would be required to make available, upon request of any person, information the Secretary or agency has on individuals who have been convicted of felonies relating to the provision of home health services.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

5. REQUIRING RENAL DIALYSIS FACILITIES TO MAKE SERVICES AVAILABLE ON A 24-HOUR BASIS (SEC. 15745 OF HOUSE BILL)

Current law

Medicare covers persons who suffer from end-stage renal disease. Facilities providing dialysis services must meet certain requirements.

House bill

Renal dialysis facilities would be required to make institutional dialysis services and supplies available on a 24-hour basis (either directly or through arrangements with providers of services or other renal dialysis facilities) and would be required to inform patients about arrangements with other providers.

Senate bill

No provision.

Conference agreement

The conference agreement does not include the House provision.

6. INDIAN HEALTH SERVICE FACILITIES (SEC. 7057(A) OF SENATE BILL)

Current law

Indian Health Service (IHS) facilities are eligible for Medicare payments for services provided to Medicare beneficiaries.

House bill

No provision.

Senate bill

The provision clarifies that nothing in the bill can be interpreted as meaning any change in Medicare payment to eligible IHS facilities.

Conference agreement

The conference agreement includes the Senate provision.

7. SENSE OF THE SENATE REGARDING COVERAGE FOR TREATMENT OF BREAST AND PROSTATE CANCER UNDER MEDICARE (SEC. 7058 OF SENATE BILL)

Current law

No provision.

House bill

No provision.

Senate bill

The provision sets forth the sense of the Senate that Medicare should not discriminate among breast and prostate cancer victims by providing drug treatment coverage for some but not all such cancers, and that the budget reconciliation conferees should amend Medicare to provide coverage for these important cancer drug treatments.

Conference agreement

The conference agreement includes the Senate provision with a modification. Under the modification, Medicare coverage is authorized for a self-administered oral drug prescribed for use as an anticancer nonsteroidal antiestrogen for treatment of breast cancer. Coverage is only authorized if the manufacturer of the drug has a rebate agreement with the Secretary under substantially similar terms and conditions as apply to Medicaid rebate agreements on the date of enactment.

SUBTITLE I—CLINICAL LABORATORY IMPROVEMENT AMENDMENTS

1. EXEMPTION OF PHYSICIANS' OFFICE LABORATORIES (SEC. 15801 OF HOUSE BILL)

Current law

The Clinical Laboratory Improvement Amendments of 1988 (CLIA 88) significantly strengthened Federal regulation of laboratories and expanded Federal oversight to virtually all labs in the country, including physicians' office laboratories. All labs are required to register with DHHS. Labs performing only simple tests receive a certificate of waiver. Other labs (performing moderate complexity and/or high complexity testing) must meet performance standards issued by the Secretary.

A special category of tests, physician performed microscopy procedures, was established in 1993. This category was expanded and renamed provider-performed microscopy procedures earlier this year. These are specified procedures which are personally performed by physicians, dentists, and certain mid-level personnel; the procedures must be performed on specimens derived from their patients as part of a physical examination and evaluation. The tests are labelled moderate complexity; however, physicians (or other personnel) performing only these tests and waivered tests are not subject to routine inspections, though most other moderate complexity requirements continue to apply.

House bill

The provision would exempt a clinical laboratory in a physician's office from the CLIA requirements. Exempted labs would be those in the office of a physician (including an office of a group of physicians) which is directed by a physician. The examinations and procedures must be performed by a physician or by individuals supervised by a physician solely as an adjunct to other services provided by the physician's office.

A clinical office laboratory would not be exempt from CLIA when it performed Papanicolaou (PAP) Smears.

Senate bill

No provision.

Conference agreement

The conference agreement includes the House provision.

SUBTITLE J—LOCK BOX PROVISIONS FOR MEDICARE PART B SAVINGS FROM GROWTH REDUCTIONS

1. TREATMENT OF PART B SAVINGS (SEC. 15901 OF HOUSE BILL; SEC. 7172 OF SENATE BILL)

Current law

No provision.

House bill

a. Authorize New Trust Fund. A new Sec. 1841 would be added to Title XVIII, Part B of the Social Security Act. It would establish a Federal Medicare Growth Reduction Trust Fund under the Department of the Treasury. The new fund would be authorized to receive gifts, bequests, and appropriations.

b. Appropriations of Part B Savings. The Secretary of the Treasury would transfer from the general fund to the Federal Medicare Growth Reduction Trust Fund amounts equal to all Medicare savings estimated to result from the provisions of OBRA of 1995.

c. Authorization of Spending From Fund. Effective in FY 2003, funds could be spent from the new trust fund to pay obligations of the Medicare program, but these trust fund outlays would be limited to amounts authorized in advance by Congress through legislative action.

Senate bill

a. Authorize New Trust Fund. No provision.

b. Appropriations of Part B Savings. The Secretary of the Treasury would transfer from the general fund to the HI Trust Fund amounts equal to certain Medicare savings under OBRA of 1995. The savings eligible for this transfer would be those resulting from changes to: the Part B deductible, the part B premium, and the part B premium for high-income individuals.

c. Authorization of Spending From Fund. No provision.

Conference agreement

a. Authorize New Trust Fund.

The conference agreement does not include the House provision.

b. Appropriations of Part B Savings.

The conference agreement includes the Senate provision with a modification. The amount of the difference between the premium set at 31.5% of program costs and an amount equal to 25% of program costs would be transferred to the HI Trust Fund. Monies derived from additional income-related premium amounts would also be transferred to the HI Trust Fund. In addition, the reference to the Part B deductible is struck.

c. Authorization of Spending From Fund.

The conference agreement does not include the House provision.

2. NONDISCHARGEABILITY OF CERTAIN MEDICARE DEBTS (SEC. 7171 OF SENATE BILL)

Current law

No provision.

House bill

No provision.

Senate bill

Section 523(a) of Title 11, U.S. Code, which concerns the discharging of individual debt during a bankruptcy proceeding, would be amended. The amendment would not allow a discharging of debt owed by a health care provider or supplier because of an overpayment to that provider or supplier from the HI Trust Fund or the SMI Trust Fund.

Conference agreement

The conference agreement does not include the Senate provision.

TITLE IX—TRANSPORTATION AND RELATED PROVISIONS

MINIMUM ALLOCATION FOR HIGHWAY PROGRAMS

Current law

The minimum allocation program guarantees that a State will receive at least 90 percent of the percent of its contribution to the Federal aid highway program in the Highway Account of the Highway Trust Fund. Less minimum allocation program funds will be needed in fiscal year 1996 than were necessary in fiscal year 1995 because of changes enacted under the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA). As provided by ISTEA, the Interstate Construction and Interstate Transfer program end in fiscal year 1995 and a new category, Reimbursement, begins in fiscal year 1996. This will reduce the amount of money required in the minimum allocation category. This change occurs because fewer states need money and some states need less money in the minimum allocation program to receive a 90 percent return from the program compared to the revenues they contribute to the Highway Trust Fund.

House bill

House bill had no provision on the minimum allocation program.

Senate amendment

The Senate amendment reduces minimum allocation funds that are not needed in fiscal year 1996. Sufficient funds are provided to meet minimum allocation requirements under ISTEA. The balance that is not needed is applied to reconciliation savings. The minimum allocation reduction produces an estimated $512 million in savings over the period fiscal year 1996 through fiscal year 2002.

Savings in the minimum allocation program occur in fiscal year 1996 on a one-time basis only. The savings are not a result of any reduction in minimum allocation funds to which states are entitled.

The ISTEA and previous surface transportation acts have exempted the minimum allocation program from other controls on highway spending because the program is designed to bring some equity to the apportionment formulas. This section does not implement any limitation on the minimum allocation program in fiscal year 1996 or in any future year. Any State that is eligible to receive funding under the minimum allocation category is assured that sufficient funds are available to provide the full amount due each State.

Conference agreement

The Conference agreement includes the Senate amendment.

EXTENSION OF HIGHER VESSEL TONNAGE DUTIES

Current law

The United States imposes a tonnage duty on a vessel that enters the United States from any port or place. The duty is also imposed on a vessel that departs from and returns to a U.S. port or place on a "voyage to nowhere".

The tonnage duty is imposed on the cargo-carrying capacity of the vessel and is assessed regardless of whether the vessel is empty or is carrying cargo.

A vessel arriving from a foreign port in the northern Western Hemisphere—Canada, Mexico, Central America—and a vessel returning from a "voyage to nowhere" must pay a tonnage duty of 9 cents per ton. However, the maximum payment for any vessel in a single year is 45 cents per ton.

A vessel arriving from a foreign port anywhere else in the world must pay a tonnage duty of 27 cents per ton, not to exceed $1.35 per ton in a single year.

Under current law, after fiscal year 1998, the tonnage duties will revert to earlier, lesser amounts—2 cents per ton, not to exceed 10 cents per ton in a single year for vessels entering from the northern Western Hemisphere and from "voyages to nowhere"—6 cents per ton, not to exceed 30 cents per ton for other vessels subject to the duty.

House bill

The House bill maintains the current level of vessel tonnage duties through fiscal year 2002.

Senate amendment

The Senate amendment did not contain a similar provision.

Conference agreement

The conference agreement includes the House language.

FEMA RADIOLOGICAL EMERGENCY PREPAREDNESS FEES

Current law

Under Public Law 96–295, the Congress established emergency planning and preparedness as new legal basis for licensing of commercial nuclear power plants. The Federal Emergency Management Agency (FEMA) Radiological Emergency Preparedness (REP) Program was created to ensure that communities in close proximity to commercial nuclear power plants are prepared in the event of radiological emergencies at the facilities. The REP Program consists of research development and training exercises which are designed to prevent emergency occurrences and to improve community and facility response plans. In March of 1995, in response to a directive in the fiscal year 1993 VA-HUD Independent Agencies Appropriations Act, FEMA developed final regulations for the assessment and collection of fees to cover the costs associated with the development of community radiological emergency response plans and other related features of the REP Program. The collection of fees has been directed on a year-by-year basis.

House bill

The House bill places in statute authority for FEMA to collect fees from licensees of commercial nuclear power plants to recover costs associated with the REP Program. The authority is extended through fiscal year 2002.

Senate amendment

The Senate amendment contained a similar provision, except that the authorization to collect fees was extended through fiscal year 2005.

Conference agreement

The conference agreement accepted the House language. The fees established shall be fair and equitable and shall reflect the full amount of FEMA's costs of providing radiological emergency services.

TITLE X—VETERANS AND RELATED PROVISIONS

Subtitle A—Extension of Temporary Authorities

AUTHORITY TO REQUIRE THAT CERTAIN VETERANS MAKE CO-PAYMENTS IN EXCHANGE FOR RECEIVING HEALTH-CARE BENEFITS

Current law

Section 1710 of title 38, United States Code, as amended by section 8013 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (OBRA 90), provides that, in addition to already existing copayment obligations (enacted in Public Law 99–272), certain veterans would be required to make per diem payments of $10 for hospital care provided by the Department of Veterans Affairs (VA) and $5 for nursing home care. That per diem copayment provision, which would have expired under OBRA 90 on September 30, 1997, was extended through September 30, 1998, by section 12002 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (OBRA 93).

Section 1722A of title 38 (a) requires a veteran (other than a veteran who has a service-connected disability rated 50 percent or more or whose income is at or below the maximum annual rate of VA pension) to pay $2 for each 30-day supply of a medication furnished on an outpatient basis; (b) prohibits a reduction in the amount of the co-payment if the initial amount of medication is less than a 30-day supply; (c) states that VA may not require a veteran to pay a copayment which exceeds the cost to VA of the prescription medication in question; and (d) requires that amounts collected under this authority be credited to VA's Medical Care Cost Recovery Fund. This provision, which would have expired under OBRA 90 on September 30, 1997, was extended through September 30, 1998, by section 12002 of OBRA 93.

House bill

Section 11011 would extend for four years, through September 30, 2002, the OBRA 90 per diem copayment requirements, and VA's authority to collect medication copayments from certain veterans.

Senate amendment

Section 11011 would extend for four years, through September 30, 2002, the OBRA 90 authority for VA to collect medication copayments from certain veterans.

Compromise agreement

Section 10011 follows section 11011 the House bill.

According to CBO, the enactment of section 10011 would result in savings of $120 million in outlays over fiscal years 1996–2000, and in savings of $255 million in outlays over fiscal years 1996–2002.

MEDICAL CARE COST RECOVERY AUTHORITY

Current law

Section 1729(a) of title 38 authorizes VA to collect from a health care payment plan the reasonable cost of medical care furnished for a non-service-connected disability of a veteran who has a service-connected disability and who is entitled to non-VA care (or payment of the costs associated with receiving non-VA care) under the health care payment plan. This provision was initially enacted as section 8011 of OBRA 90 and would have expired, under OBRA 90, on October 1, 1993. Section 12003 of OBRA 93 extended the expiration date of this provision to October 1, 1998. That date is codified at section 1729(a)(2)(E) of title 38.

House bill

Section 11012 would extend for four years, through September 30, 2002, VA's authority to collect from a health care payment plan the reasonable cost of medical care furnished to a veteran who has a service-connected disability for treatment of a non-service-connected disability.

Senate amendment

Section 11012 contains a substantially identical provision.

Compromise agreement

Section 10012 contains this provision.

According to CBO, the enactment of section 10012 would result in savings of $405 million in outlays over fiscal years 1996–2000, and in savings of $855 million in outlays over fiscal years 1996–2002.

INCOME VERIFICATION AUTHORITY

Current law

Section 5317 of title 38, and section 6103 of the Internal Revenue Code, 26 U.S.C. § 6103, authorize VA to verify the eligibility of recipients of, or applicants for VA need-based benefits and VA "means-tested" medical care by gaining access to income-relevant records of the Department of Health and Human Services/Social Security Administration (SSA) and Internal Revenue Service (IRS). These provisions were initially enacted as section 8051 of OBRA 90 and would have expired, under OBRA 90, on September 30, 1997. Section 12004 of OBRA 93 extended these provisions to September 30, 1998.

House bill

Section 11013 would extend for four years, through September 30, 2002, VA's authority under section 5317 of title 38 to verify income data furnished to VA by gaining access to income relevant records of the IRS and SSA.

Senate amendment

Section 11014 contains a substantially identical provision, except that it also extends section 6103 of the Internal Revenue Code.

Compromise agreement

Section 10013 follows section 11013 of the House bill. The Committees note that the title of this Reconciliation compromise pertaining to the Internal Revenue Code contains a provision extending section 6103 of the Internal Revenue Code.

According to CBO, the enactment of section 10013 would result in savings of $42 million in outlays over fiscal years 1996–2000, and in savings of $140 million in outlays over fiscal years 1996–2002.

LIMITATION ON PENSION FOR CERTAIN RECIPIENTS OF MEDICAID-COVERED NURSING HOME CARE

Current law

Section 5503(f) of title 38 limits to $90 a month the maximum amount of VA needs-based pension that may be paid to Medicaid-eligible veterans and surviving spouses who have no dependents and who are in nursing homes that participate in Medicaid. This section treats such individuals as if the care were being furnished at VA expense. This provision was initially enacted as section 8003 of OBRA 90 and would have expired, under OBRA 90, on September 30, 1997. Section 12005 of OBRA 93 extended these provisions to September 30, 1998.

House bill

Section 11014 would extend for four years, through September 30, 2002, the $90 limitation on the maximum amount of VA pension which can be received by Medicaid-eligible veterans and surviving spouses who have no dependents and who are in nursing homes that participate in Medicaid.

Senate amendment

Section 11015 contains a substantially identical provision.

Compromise agreement

Section 10014 contains this provision.

According to CBO, the enactment of section 10014 would result in savings of $437 million in outlays over fiscal years 1996–2000, and in savings of $827 million in outlays over fiscal years 1996–2002.

HOME LOAN FEES

Current law

Section 3729 of title 38 specifies fees that will be paid by borrowers who obtain home purchase loans guaranteed, insured, or made by VA.

For borrowers obtaining the first such loan, fees generally range from 0.50% to 2.0% of the loan amount, depending on the amount of the down payment to be made by the borrower and the type of military or naval service (active duty vs. selected reserve) upon which eligibility for home loan benefits is based. Pursuant to subsection (a)(4) of section 3729, an additional fee of 0.75% is added to the fees set forth in section 3729, except as otherwise specified, for "first use" loans closed between September 30, 1993 and October 1, 1998. The "additional fee" provision was enacted as section 12007(a) of OBRA 93.

With respect to borrowers obtaining subsequent housing assistance loans, section 3729 specifies that the fee to be charged shall be 3.0% of the total loan amount. This provision applies to loans which close between September 30, 1993 and October 1, 1998. This provision was enacted as section 12007(b) of OBRA 93.

House bill

Section 11015 would extend for four years, through September 30, 2002, the loan fees currently specified in section 3729 of title 38.

Senate amendment

Section 11013 contains a substantially identical provision.

Compromise agreement

Section 10015 contains this provision.

According to CBO, the enactment of section 10015 would result in savings of $289 million in outlays over fiscal years 1996–2000, and in savings of $581 million in outlays over fiscal years 1996–2002.

PROCEDURES APPLICABLE TO LIQUIDATION SALES ON DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS

Current law

Section 3732 of title 38 specifies that VA has two options when a property, the financing of which is guaranteed under the VA Home Loan Guaranty Program, goes into foreclosure. VA may simply pay off the guaranty, or the VA may elect to purchase the property securing the loan in default and resell it. The decision on the course of action to take will depend, generally, on VA calculations as to which action would be less costly and, therefore, more advantageous to the Government.

The provisions governing the above calculations, and the circumstances under which VA shall exercise the latter option are set forth in subsection (c) of section 3732. Subsection (c) applies only with respect to properties financed with VA-guaranteed home loans which close before October 1, 1998. That period of applicability was extended to that date by section 13004 of OBRA 93.

House bill

Section 11016 would extend for four years, through September 30, 2002, the provisions of subsection (c) of section 3732.

Senate amendment

The Senate amendment contains no comparable provision.

Compromise agreement

Section 10016 follows section 11016 of the House bill.

According to CBO, the enactment of section 10016 would result in savings of $8 million over fiscal years 1996–2000, and in savings of $16 million in outlays over fiscal years 1996–2002.

ENHANCED LOAN ASSET SALE AUTHORITY

Current law

Section 3720(h) authorizes VA to guarantee the timely payment of principal and interest to purchasers of real estate mortgage investment conduits (REMICs). REMICs are used to "bundle" and market a number vendee loan notes—that is, notes on direct loans made by VA to purchasers of VA-acquired real estate—so that they may be sold for cash under favorable terms. Under this authority, VA guarantees to REMIC purchasers that principal and interest will be paid timely. That assurance facilitates the marketing of such securities and enhances their value in the marketplace. It thus increases the return to the Treasury when such securities are sold.

VA's authority to guarantee REMICs expires on December 31, 1995.

House bill

Section 11024 would extend, through September 30, 1996, VA's authority to guarantee the timely payment of principal and interest to purchasers of REMICs.

Senate amendment

The Senate amendment contains no comparable provision.

Compromise agreement

Section 10017 follows section 11024 of the House bill, except that it extends VA's authority to guarantee the timely payment of principal and interest to the purchasers of REMICs through September 30, 2002.

According to CBO, the enactment of section 10017 would result in savings of $5 million in fiscal year 1996, in savings of $25 million in outlays over fiscal years 1996–2000, and in savings of $35 in outlays over fiscal years 1996–2002.

SUBTITLE B—OTHER MATTERS

REVISION TO PRESCRIPTION DRUG COPAYMENT

Current law

Section 1722A of title 38: (a) requires that certain veterans pay $2 for each 30-day supply of a medication furnished on an outpatient basis; (b) prohibits a reduction in the amount of the co-payment if the initial amount of medication is less than a 30-day supply; (c) states that VA may not require a veteran to pay a copayment which exceeds the cost to VA of the prescription medication in question; and (d) requires that amounts collected under this authority be credited to VA's Medical Care Cost Recovery Fund. Section 1722A, however, exempts the following categories of veteran from the copayment requirement: veterans with a service-connected disability rated 50% or more; and veterans with an annual income at or below the maximum annual rate of VA pension. This provision is currently scheduled to expire on September 30, 1998.

Section 5302 of title 38 authorizes the Secretary of Veterans Affairs to waive, on equitable grounds, the recovery of any payment owed to VA.

House bill

Section 11021 would: (a) increase the copayment amount to $3; (b) repeal the requirement that the copayment not exceed the cost of the medication in question; and (c) specify that the VA's "waiver of indebtedness" authority under section 5302 not apply to veterans' obligations to make medication copayments under section 1722A.

Senate amendment

The Senate amendment contains no comparable provision.

Compromise agreement

Section 10021 follows section 11021 of the House bill, except that it increases the copayment amount to $4, and adds former prisoners of war to the listing of veterans who are exempt from the medication copayment requirement.

According to CBO, the enactment of section 10021 would result in savings of $74 million in fiscal year 1996, in savings of $480 million in outlays over fiscal years 1996–2000, and in savings of $718 million in outlays over fiscal years 1996–2002.

ROUNDING DOWN OF COST-OF-LIVING ADJUSTMENTS IN COMPENSATION AND DIC RATES

Current law

Under chapter 11 of title 38, VA pays a monthly cash benefit, compensation, to veterans who have service-connected disabilities. The amount of the payment varies with the degree of service-connected disability suffered by the veteran.

Under chapter 13 of title 38, VA pays monthly cash benefits, Dependency and Indemnity Compensation (DIC), to survivors of service members or veterans who died, on or after January 1, 1957, from a disease or injury incurred or aggravated during active service. Until 1992, the basic monthly benefit received by the DIC recipient varied with the pay grade at which the deceased service member or veteran was compensated during service. In 1992, chapter 13 was amended to put into place a new system of DIC that pays a "flat rate"—that is, a rate which pays all beneficiaries of DIC the same basic monthly benefit irrespective of the deceased's former military or naval pay grade. "Old-law" DIC recipients, however, are "grandmothered"—that is, if the basic DIC benefit the beneficiary would receive under the "old-law" grade-based program exceeds the "new-law" flat rate amount, the beneficiary continues to receive the "old-law" benefit.

Compensation and DIC payments are not indexed. The Congress has, however, enacted legislation which, for a given year, has adjusted compensation and DIC benefits to reflect the percentage of change in the consumer price index (CPI) relative to the prior year. When such a cost-of-living adjustment (COLA) is legislated and new compensation and DIC rates are thereby computed, the prior year's benefit—which is paid in "round dollar" amounts—is multiplied by a fraction which expresses the change in the CPI, and the product is then converted to a whole-dollar amount using "normal" rounding techniques. That is, if the product of the whole dollar amount multiplied by the CPI is a fractional dollar amount of $0.50 or more, the compensation or DIC payment is rounded up; if it is a fractional amount of $0.49 or less, it is rounded down.

House bill

Section 11022 requires VA to "round down" any cost-of-living (COLA) adjustments that might be made during fiscal years 1996 through 2002.

Section 11022 also specifies a method for calculating COLAs for "old-law" DIC recipients during fiscal years 1996 through 2002. It states that (a) all DIC recipients shall receive the same dollar-amount COLA; and (b) that "flat rate" COLA shall be equal to the whole dollar amount that is yielded when the "new-law" DIC rate is calculated by reference to the percentage change in the CPI, rounded down.

Senate amendment

Section 11021 contains a "round down" provision that is substantially identical to the House bill. It contains no provision which is comparable to the House bill's "flat rate" COLA for "old-law" DIC beneficiaries.

Compromise agreement

Section 10022 follows the House bill.

According to CBO, the enactment of section 10022 would result in savings of $17 million in outlays in fiscal year 1996, in savings of $333 million in outlays over fiscal years 1996–2000, and in savings of $634 million in outlays over fiscal years 1996–2002.

REVISED STANDARD FOR LIABILITY FOR INJURIES RESULTING FROM DEPARTMENT OF VETERANS AFFAIRS TREATMENT

Current law

Section 1151 of title 38 states that if a veteran/patient suffers an injury as a result of VA medical care (and not as a result of the veteran/patient's own willful misconduct), and that injury results in additional disability or death, then the veteran/patient and his or her survivors shall be entitled to compensation and DIC benefits as if the additional disability or death were service-connected. VA regulations also set forth standards for the awarding of compensation or DIC for injuries or death resulting from VA medical care. Until recently, those regulations had specified that compensation or DIC would be paid only if the requirements set forth in the text of section 1151 were met and the injury in question had been a result of either VA fault or an "accident," defined by VA regulations as an "unforeseen, untoward" event.

Recent litigation, culminating in the U.S. Supreme Court's decision in Brown v. Gardner,——U.S. ——, 115 S.Ct. 552, 130

L.Ed.2d 462 (1994), challenged the imposition, by VA regulation, of a "fault-or-accident" requirement not set forth in the text of section 1151. The courts ruled, inter alia, that no such requirement was set forth in statute; that the statute did not authorize VA to impose such a requirement by regulation; and that, therefore, VA could not deny compensation for failure to satisfy the "fault-or-accident" requirement. The courts also indicated that their decisions were premised on the text of section 1151 as enacted by Congress, which text Congress—but not VA—may modify.

VA has amended its regulations to conform to the standards specified in the above-referenced court rulings.

House bill

Section 11023 would amend section 1151 to establish a new standard similar to VA's invalidated "fault-or-accident" requirement with respect to all medical injuries for which a claim for section 1151 benefits was received by VA on or after October 1, 1995. It would also provide for VA liability for medical injuries caused by an event which was not reasonably foreseeable.

Senate amendment

Section 11041 contains a substantially identical provision.

Compromise agreement

Section 10023 contains this provision.

According to CBO, the enactment of section 10023 would result in savings of $89 million in fiscal year 1996, in savings of $1.601 billion in outlays over fiscal years 1996–2000, and in savings of $2.498 billion in outlays over fiscal years 1996–2002.

WITHHOLDING OF PAYMENTS AND BENEFITS

Current law

Section 3726 of title 38 states that, except as noted, no Federal agency may offset any payment owed to a veteran (or a deceased veteran's surviving spouse) in order to collect on a debt owed to VA by the veteran (or surviving spouse) under VA's home loan guaranty program unless one of two requirements are met: the debtor consents to the offset; or a judgement against the debtor from a court of competent jurisdiction is secured. The only exception to the rule is that veterans' benefits may be so offset.

House bill

Section 11025 would amend section 3726 to authorize VA to refer a veteran's (or surviving spouse's) home loan guaranty debt to another Federal agency for offset under certain circumstances. Referrals would be allowed if (a) the debtor is given notice, in writing, of VA's authority to waive debts under section 5302 of title 38; (b) VA makes an affirmative determination that the debtor should not be released from liability under section 3713(b) of title 38; and (c) the debtor has been notified of procedures available to appeal a determination that a release of liability is not warranted. In effect, this provision allows VA to refer such debts to the Internal Revenue Service for offset against income tax refunds or, in the case of debtors who are Federal employees, to the debtor's employing agency for offset against salary or wages.

Senate amendment

The Senate amendment contains no comparable provision.

Compromise agreement

Section 10024 follows section 11025 of the House bill.

According to CBO, the enactment of section 10024 would result in savings of $90 million in outlays in fiscal year 1996, in savings of $90 million in outlays over fiscal years 1996–2000, and in savings of $90 in outlays over fiscal years 1996–2002.

HEALTH CARE ELIGIBILITY REFORM (HOUSE BILL)/EDUCATIONAL BENEFITS AMENDMENTS (SENATE AMENDMENT)

Current law

Eligibility for VA Health Care Services: Section 1710(a)(1) of title 38 states that VA shall provide needed hospital care, and may provide needed nursing home care, to specified classes of veterans for treatment of specified conditions. Those classes include: veterans who have service-connected disabilities for treatment of those service-connected disabilities; veterans who were discharged from service due to disabilities for treatment of any disability; veterans who would receive disability compensation but for the operation of laws which preclude "dual compensation" for treatment of any disability; veterans who have a service-connected disability rated at 50% or more for treatment of any disability; veterans who have a service-connected disability rated less than 50% for treatment of any disability; veterans who are former prisoners of war for treatment of any disability; veterans of the Persian Gulf War who VA finds might have been exposed to toxic substances or environmental hazards for treatment of conditions other than those determined by VA not to have been caused by that exposure; veterans of the Mexican border period or World War I for treatment of any disabilities; and veterans with non-service-connected disabilities if the veteran is of limited means as determined in accordance with section 1722(a) of title 38. Other veterans are eligible for VA hospital care, but only to the extent that resources and space are available to provide such care, and only if the veteran makes copayments.

Section 1712 of title 38 establishes various rules governing VA provision of outpatient medical services. VA shall furnish needed outpatient medical services to veterans who have a service connected disability (including veterans who were discharged from service due to disabilities and veterans eligible for compensation under section 1151) for treatment of that disability, and to veterans who have a service-connected disability rated at 50% or more for treatment of any disability. Section 1712 also states that VA shall provide needed "pre-, post-, and obviate" outpatient treatment to veterans who have a service-connected disability rated at 30% or 40%, and to veterans whose income does not exceed the maximum amount of VA pension. VA may furnish all needed medical services to classes of veterans including former prisoners of war, World War

I veterans, and those receiving increased benefits based on need of aid and attendance or permanent housebound status. VA may furnish "pre-, post-, and obviate" services to other veterans who are eligible for care under the "means test" in section 1722(a).

Educational Benefits: Chapter 30 of title 38 states rules applicable to the All-Volunteer Force Educational Assistance Program, or the "Montgomery GI Bill" (MGIB). Recipients of MGIB benefits who are pursuing full time programs of study receive monthly benefits checks (which vary from $328.97 to $404.88 per month for 36 months depending on the period of the beneficiary's initial obligated period of active duty) if they had not "opted out" of participation while in service. The military or naval pay of service members who do not "opt out" of MGIB participation is reduced $100 per month during the first 12 months of service.

House bill

Eligibility for VA Health Care Services: Sections 11031 through 11037 affect a broad revision of the statutes governing eligibility for VA hospital care and outpatient treatment (including the provision of prosthetics). That revision substitutes a single uniform eligibility standard—"medical need"—for eligibility for hospital and outpatient care which would be applied to all veterans for whom VA, under current law, shall provide all needed hospital care (other than veterans whose only eligibility for hospital care is based on a service-connected disability rated at 0%). Thus, those veterans to whom VA, under current law, shall provide all needed hospital care would also be eligible for all needed outpatient medical treatment.

The measure would also require VA to establish an annual enrollment system for VA hospital and outpatient care and to manage that system in accordance with specified priorities. It would also grant to VA greater flexibility to contract for hospital care and medical services from "outside" sources, and to "share" VA resources with outside providers, while directing that VA maintain its "in-house" capacity to provide specialized treatment and rehabilitation services to disabled veterans, including those with spinal cord dysfunction, blindness, amputations and mental illness. Finally, the measure would extend expiring provisions of law (section 204 of Public Law 102–585) authorizing VA to enter into agreements to provide services to certain beneficiaries of the Department of Defense, and authorize VA to recover payments from health plans for care for which the patient (or the provider) would be eligible for payment under the plan furnished certain beneficiaries of the Department of Defense.

Educational Benefits: The House bill contains no provision pertaining to educational benefits.

Senate amendment

Eligibility for VA Health Care Services: The Senate bill contains no provision pertaining to eligibility for VA health care services.

Educational Benefits: Section 11031 limits, through September 30, 2002, the annual adjustment in MGIB benefits to one-half of the Consumer Price Index.

Section 11032 raises, for fiscal year 1996, the monthly pay reduction of service members who do not "opt out" of MGIB from $100 per month for twelve months to $134.96 per month for twelve months. It also "pegs" the monthly pay reduction, for fiscal years 1997 through 2002, to the same index to which MGIB benefits are tied.

Compromise agreement

Eligibility for VA Health Care Services: The bill follows the Senate bill provision. That is, it contains no provision pertaining to eligibility for VA health care services. The conferees note, however, that the Senate Committee on Veterans Affairs intends to hold legislative hearings during the 104th Congress to consider the issue of eligibility reform.

Educational Benefits: The bill follows the House bill provision. That is, it contains no provision pertaining to educational benefits.

TITLE XI. REVENUE PROVISIONS [1]

I. FAMILY TAX RELIEF

A. CHILD TAX CREDIT FOR CHILDREN UNDER AGE 18 (SEC. 6101 OF H.R. 1215 AND SEC. 12001 OF THE SENATE AMENDMENT)

Present law

Present law does not provide tax credits based solely on the taxpayer's number of dependent children. Taxpayers with dependent children, however, generally are able to claim a personal exemption for each of these dependents.

House bill

The House bill allows taxpayers a nonrefundable tax credit of $500 for each qualifying child under the age of 18. The credit amount is indexed for inflation after 1996.

The credit is phased out ratably for taxpayers with modified AGI over $200,000, and is fully phased out at modified AGI of $250,000. For purposes of the AGI phaseout, the taxpayer's AGI is increased by the amount otherwise excluded from gross income under Code sections 911, 931, or 933 (relating to the exclusion of income of U.S. citizens or residents living abroad; residents of Guam, the Northern Mariana Islands, and American Samoa; and residents of Puerto Rico, respectively). After 1996, the beginning point of the phaseout range ($200,000) is indexed for inflation. The size of the phaseout range will change as needed so as to remain 100 times the maximum amount of the credit per child.

Married taxpayers filing separate returns generally may not claim the credit.

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[1] Rule XXI5(c) of the Rules of the House of Representatives provides that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting." The House conferees have carefully reviewed the provisions of title XI of the conference agreement, and all other provisions of the conference agreement, to determine whether any of these provisions constitutes a Federal income tax rate increase within the meaning of the House Rules. It is the opinion of the House conferees that there is no provision of the conference agreement that constitutes a Federal income tax rate increase within the meaning of House Rule XXI5(c) or (d).

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

Senate Amendment

The Senate amendment allows taxpayers a nonrefundable tax credit of $500 for each qualifying child under the age of 18. The credit amount is not indexed for inflation.

For taxpayers with AGI in excess of certain thresholds, the allowable child credit is reduced by $25 for each $1,000 of AGI (or fraction thereof) in excess of the threshold. For married taxpayers filing joint returns, the threshold is $110,000. For taxpayers filing single or head of household returns, the threshold is $75,000. For married taxpayers filing separate returns, the threshold is $55,000. These thresholds are not indexed for inflation.

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment, except that the credit is effective October 1, 1995. The portion of the child credit that is effective for the period from October 1, 1995, through December 31, 1995, will be provided to taxpayers through a special procedure. The Internal Revenue Service has raised significant concerns about making the credit available through the normal return filing process for the 1995 income tax return. In light of these concerns, the conferees have directed the IRS to use a special procedure to help taxpayers obtain their 1995 child tax credit. Under this procedure, the IRS is directed to issue a form on which taxpayers can file for their 1995 child tax credit following the completion of the normal tax return filing season (i.e., after April 15, 1996). The IRS is directed to mail a notice to taxpayers on or before February 1, 1996.

The text of the notice will read as follows: "The Balanced Budget Act of 1995 was recently passed by the Congress. The Act's child tax credit allows taxpayers to reduce their taxes by $500 per child. The credit is effective October 1, 1995. You may wish to check with your employer about changing your tax withholding to take immediate advantage of the credit to which you are entitled for the current tax year. In addition, the Internal Revenue Service will be sending you a form in June of this year which you may use to claim the credit to which you are entitled for the period from October 1 through December 31, 1995 ($125 per child for 1995). In order to obtain your 1995 credit, you should file this form by August 15, 1996. Your refund will be sent to you sometime after October 1, 1996."

The IRS will mail to taxpayers on or before June 1, 1996, the form on which taxpayers may request their 1995 child tax credit. If taxpayers file their requests for their 1995 child tax credit on or before August 15, 1996, the IRS will mail their checks to them between October 1, 1996, and October 15, 1996.

In the case where a taxpayer's 1995 income tax liability had been reduced by a refundable credit, the amount of the 1995 child credit that is allowable would be calculated as if the taxpayer had been able to claim the 1995 child credit at the time that the taxpayer filed his or her 1995 income tax return. For example, suppose a taxpayer had a 1995 income tax liability of $110 prior to the application of a $1,000 refundable tax credit. The refundable credit would reduce the income tax liability to zero and a refund of $890 would be paid to the taxpayer. If the taxpayer has one qualifying child for the 1995 portion of the child tax credit, the taxpayer may receive an additional $110 refund, since he would have been able to use $110 of the $125 of 1995 child tax credit to offset his or her 1995 income tax liability, had the child tax credit been available on the 1995 income tax return.

The amount of the 1995 child credit generally will be treated as an overpayment of taxes for purposes of the appropriation of funds to pay the credit amounts.

B. MARRIAGE PENALTY RELIEF: TAX CREDIT; INCREASE IN STANDARD DEDUCTION FOR JOINT RETURNS (SEC. 6102 OF H.R. 1215 AND SEC. 12002 OF THE SENATE AMENDMENT)

Present law

MARRIAGE PENALTY

A married couple generally is treated as one tax unit that must pay tax on the unit's total taxable income. Although married couples may elect to file separate returns, the rate schedules and provisions are structured so that filing separate returns usually results in a higher tax than filing joint returns. Other rate schedules apply to single persons and to single heads of household.

A "marriage penalty" exists when the sum of the tax liabilities of two unmarried individuals filing their own tax returns (either single or head of household returns) is less than their tax liability under a joint return (if the two individuals were to marry). A "marriage bonus" exists when the sum of the tax liabilities of the individuals is greater than their combined tax liability under a joint return.

While the size of any marriage penalty or bonus under present law depends upon the individuals' incomes, number of dependents, and itemized deductions, as a general rule married couples whose earnings are split more evenly than 70-30 suffer a marriage penalty. Married couples whose earnings are largely attributable to one spouse generally receive a marriage bonus.

Under present law, the size of the standard deduction and the tax bracket breakpoints follow certain customary ratios across filing statuses. The standard deduction and tax bracket breakpoints for single filers are roughly 60 percent of those for joint filers. With these ratios, unmarried individuals have standard deductions whose sum exceeds the standard deduction they would receive as a married couple filing a joint return. Thus, their taxable income as joint filers may exceed the sum of their taxable incomes as unmarried individuals.

Standard deduction

Taxpayers who do not itemize deductions may choose the standard deduction, which is subtracted (along with certain other items) from adjusted gross income (AGI) in arriving at taxable income. The size of the standard deduction varies according to filing status and is indexed for inflation. For 1996, the size of the standard deduction is projected to be as follows:

Filing status	*Standard deduction*
Married, joint return	$6,700
Head of household return	5,900
Single return	4,000
Married, separate return	3,350

For 1996, the standard deduction for joint returns is projected to be 1.675 times the standard deduction for single returns.

House bill

Under the House bill, married couples who file a joint return may be eligible for a nonrefundable credit of up to $145 against their income tax liability. The Secretary of the Treasury is directed to issue tables calculating the marriage penalty credit applicable for married taxpayers based on the qualified earned income of each of the spouses.

The amount of the credit is based on the hypothetical tax liabilities that would result if the individual income tax rates applicable to single filers were applied to each spouse's qualified earned income, allowing for one personal exemption and the standard deduction allowed for single filers. The sum of those hypothetical tax liabilities is compared to the hypothetical tax liability that would result if the individual income tax rates applicable to married couples filing joint returns were applied to the aggregate qualified earned income of the spouses, allowing for two personal exemptions and the standard deduction allowed for joint filers.

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

Senate amendment

The Senate amendment increases the standard deduction for married taxpayers filing a joint return according to the following schedule:

For taxable years beginning in calendar year—	*The standard deduction would be—*
1996	$6,800
1997	7,150
1998	7,500
1999	7,950
2000	8,200
2001	8,600
2002	9,100
2003	9,500
2004	9,950
2005	10,800

For calendar years after 2005, the $10,800 amount is indexed for inflation.

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment, except that the conference agreement modifies the schedule for increasing the standard deduction for joint returns. In addition, the amount of the standard deduction for joint returns is expressed relative to the standard deduction for single returns as follows:

For taxable years beginning in calendar year—	*The ratio of the standard deduction for joint returns relative to single returns would be—*
1996	1.68
1997	1.71
1998	1.72
1999	1.73
2000	1.75
2001	1.77
2002	1.78
2003	1.88
2004	1.91
2005 and after	2.00

The dollar values of the standard deduction for joint filers will be published each year in the instructions for the income tax returns; taxpayers will not be required to perform the multiplications described above.

C. TAX CREDIT FOR ADOPTION EXPENSES; EXCLUSION FOR CERTAIN ADOPTION EXPENSES (SEC. 6401 OF H.R. 1215 AND SEC. 12003 OF THE SENATE AMENDMENT)

Present law

Present law does not provide a tax credit for adoption expenses. Present law also does not provide an exclusion from gross income for employer-provided adoption assistance.

House bill

The House bill provides a nonrefundable tax credit of up to $5,000 per child for qualified adoption expenses paid or incurred by the taxpayer. The credit is denied for any expense to the extent that such expenses are also funded by any Federal, State or local grant program. An exception from this rule is provided solely in the case of certain special-needs adoptions.

The credit is phased out ratably between $60,000 and $100,000 of modified adjusted gross income (AGI). The House bill does not include an exclusion for employer-provided adoption assistance.

Effective date.—Taxable years beginning after December 31, 1995.

Senate amendment

The Senate amendment differs from the House bill in five respects. Unlike the House bill, the Senate amendment:

(1) Allows the credit to be carried forward for up to five taxable years;

(2) Phases out the credit based on taxable income, not modified AGI;

(3) Does not allow a credit in the case of special-needs adoptions to the extent funded by Federal, State or local grant programs;

(4) Requires a finalized adoption for credit eligibility; and

(5) Provides an exclusion from income (up to $5,000 per child) for employer-provided adoption assistance.

Effective date.—Same as the House bill.

Conference agreement

The conference agreement follows the Senate amendment with three modifications. First, the phaseout ranges for the credit and exclusion start at $75,000 of modified AGI and end at $115,000 of modified AGI. Second, the requirement of a finalized adoption is applied only in the case of international adoptions. Third, the exception relating to special-needs adoptions in the House bill is included in the conference agreement

Effective date.—Taxable years beginning after December 31, 1995.

D. INTEREST ON STUDENT LOANS (SEC. 12004 OF THE SENATE AMENDMENT)

Present law

The Tax Reform Act of 1986 repealed the deduction for personal interest. Student loan interest generally is treated as personal interest and thus is not allowable as an itemized deduction from income. There is no tax credit allowed for student loan interest paid by a taxpayer.

House bill

No provision.

Senate amendment

In general

The Senate amendment allows individuals who have paid interest on qualified education loans a nonrefundable credit against income tax liability equal to 20 percent of such interest. The maximum credit allowed is $500 ($1,000 in the case of a taxpayer paying interest on loans for two or more students). Unused amounts of credit cannot be carried forward or backward to other taxable years.

A qualified education loan generally is any indebtedness incurred to pay for the qualified higher education expenses of the taxpayer or the taxpayer's spouse or dependents in attending (1) higher education institutions and certain area vocational education schools (i.e., eligible educational institutions defined in Code section 135(c)(3)) or (2) institutions conducting internship or residency programs leading to a degree or certificate from an institution of higher education, a hospital, or a health care facility conducting postgraduate training.

Qualified higher education expenses are the student's cost of attendance as defined in section 472 of the Higher Education Act of 1965 (generally, tuition, fees, room and board, and related expenses). At the time the expenses are incurred, the student has to be the taxpayer or the taxpayer's spouse or dependent.

Income phaseout range for credit

The credit is phased out ratably over the following modified adjusted gross income (modified AGI) ranges: joint filers ($60,000–$75,000) and unmarried individuals ($40,000–$55,000). The beginning of the phaseout ranges (but not the size of the phaseout range) is indexed for inflation for taxable years beginning after 1996. Modified AGI is defined as the taxpayer's AGI (1) increased by the amount otherwise excluded from gross income under Code sections 135, 911, 931, or 933 (relating to educational savings bonds and to the exclusion of income of U.S. citizens or residents living abroad; residents of Guam, the Northern Mariana Islands, and American Samoa; and residents of Puerto Rico, respectively) and (2) calculated after the inclusion of Social Security benefits in income, the deduction for contributions to individual retirement arrangements, and the limitation on passive losses.

Credit claimed for interest on borrowing for expenses of taxpayer or spouse

In the case of qualified education loans used to pay the qualified higher education expenses of the taxpayer or the taxpayer's spouse, the credit is allowed only with respect to interest paid on a qualified education loan during the first 60 months in which interest payments are required. For purposes of counting the 60 months, any qualified education loan and all refinancing (that is treated as a qualified education loan) of such loan is treated as a single loan.

Credit claimed for interest on borrowing for expenses of taxpayer's dependent

In the case of qualified education loans used to pay the qualified higher education expenses of an individual other than the taxpayer or the taxpayer's spouse, no credit is allowed unless the individual is claimed as a dependent of the taxpayer for that taxable year and the individual is at least a half-time student during that taxable year.

Limitations on claiming credit

No credit is allowed to an individual if that individual is claimed as a dependent on another taxpayer's return for the taxable year beginning in the calendar year in which such individual's taxable year begins. No credit is allowed for interest on any amount of education loan indebtedness for which a deduction is claimed under any other provision.

Couples who are married at the end of the taxable year have to file a joint return to claim the credit unless they lived apart for the last six months of the taxable year and the individual claiming the credit (1) maintained as his or her home a household for a dependent child for more than one-half of the taxable year and (2) furnished over one-half of the cost of maintaining that household in that taxable year. An individual legally separated from his spouse under a decree of divorce or separate maintenance is not considered married for purposes of this provision.

Information reporting on student loan interest

Any person in a trade or business or any governmental agency who receives $600 or more in qualified education loan interest from an individual during a calendar year is required to file an information report on such interest to the IRS and to the payor. In the case of interest received by any person on behalf of another person, generally only the first person receiving the interest is required to file the information reports.

Effective date

The provision is effective for payments of interest due after December 31, 1995, on any qualified education loan. Thus, in the case of already existing qualified education loans used to pay the qualified higher education expenses of the taxpayer or the taxpayer's spouse, interest payments will qualify for the credit to the extent that the 60-month period has not expired.

Conference agreement

In general

The conference agreement provides that certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for such interest expenses, up to a maximum deduction of $2,500 per year. The definitions of qualified education loans and qualified education expenses follow the Senate amendment, except that in order for the interest to be deductible under this provision, the indebtedness must be incurred to pay for the qualified higher education expenses of the taxpayer or the taxpayer's spouse.

Income phaseout range for deduction

The conference agreement follows the Senate amendment, except that the deduction is phased out ratably over the following modified AGI ranges: joint filers ($65,000–$85,000) and unmarried individuals ($45,000–$65,000).

Deduction claimed for interest on borrowing for expenses of taxpayer or spouse

The conference agreement follows the Senate amendment, with the clarification that months during which the qualified education loan is in deferral or forbearance do not count against the 60-month period.

Limitations on claiming deduction

The conference agreement follows the Senate amendment.

Information reporting on student loan interest

The conference agreement follows the Senate amendment. The conferees expect that the Secretary of the Treasury will clarify in regulations the information reporting requirements on qualified educational loans.

Effective date

The conference agreement follows the Senate amendment.

E. CUSTODIAL CARE OF CERTAIN ELDERLY FAMILY MEMBERS IN TAXPAYER'S HOME (SEC. 6402 OF H.R. 1215)

Present law

Generally, present law does not provide for tax credits based on custodial care of parents and grandparents.

House bill

The House bill provides a nonrefundable income tax credit of $500 for each qualified family member. Generally, a qualified family member is a parent or grandparent who lives with the taxpayer and is physically or mentally incapable of caring for himself or herself.

Effective Date.—Taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement provides for an above-the-line deduction of up to $1,000 of certain expenses incurred in the care of each qualified family member. The conference agreement generally follows the definition of qualified persons contained in the House bill with the addition of a support test.

Effective Date.—Taxable years beginning after December 31, 1995.

F. INCLUSION IN INCOME OF SOCIAL SECURITY BENEFITS (SEC. 6201 OF H.R. 1215)

Present law

In general

Under present law, taxpayers receiving Social Security and Railroad Retirement Tier 1 benefits are not required to include any such benefits in gross income if their "provisional income" does not exceed $25,000 in the case of unmarried taxpayers or $32,000 in the case of married taxpayers filing joint returns. For purposes of these computations, a taxpayer's provisional income is defined as adjusted gross income plus tax-exempt interest plus certain foreign source income plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit.

Certain taxpayers with provisional income in excess of those thresholds are required to include in gross income up to 50 percent of their Social Security or Railroad Retirement Tier 1 benefit. Under a provision added by the Revenue Reconciliation Act of 1993 ("1993 Act"), taxpayers with provisional income in excess of a second-tier threshold ($34,000 in the case of unmarried taxpayers or $44,000 in the case of married taxpayers filing joint returns) are required to include in gross income up to 85 percent of their Social Security or Railroad Retirement Tier 1 benefit.

If the taxpayer's provisional income exceeds the lower threshold but does not exceed the second-tier threshold, then the amount of the inclusion is the lesser of (1) 50 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 50 percent of the excess of the taxpayer's provisional income over the lower threshold.

If the amount of provisional income exceeds the second-tier threshold, then the amount of the inclusion is the lesser of: (1) 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit or (2) the sum of: (a) 85 percent of the excess of the taxpayer's provisional income over the second-tier threshold, plus, (b) the smaller of (I) the amount of benefits that would have been included if the 50-percent inclusion rule (the rule in the previous paragraph) were applied, or (ii) one-half of the difference between the taxpayer's second-tier threshold and lower threshold.

Treatment of nonresident alien individuals

If a nonresident alien individual is engaged in a trade or business within the United States during the taxable year, the individual is subject to U.S. tax at the normal graduated rates on net taxable income that is effectively connected with the conduct of the U.S. trade or business. For purposes of taxing the income of nonresident alien individuals, the income thresholds for including Social Security and Railroad Retirement Tier 1 benefits do not apply. Instead, a fixed percentage of any such benefit is included in gross income. Until January 1, 1995, that percentage was 50 percent.

The implementing legislation for the General Agreement on Tariffs and Trade (P.L. 103–465) increased from 50 percent to 85 percent the amount of Social Security or Railroad Retirement Tier 1 benefits included in the gross income of a nonresident alien individual, effective for benefits paid after December 31, 1994, in taxable years ending after such date.

Trust funds

Revenues from the income taxation of Social Security and Railroad Retirement Tier 1 benefits attributable to the 1993 Act increase in the portion of benefits included in gross income are credited quarterly to the Medicare Hospital Insurance (HI) Trust Fund. The remainder of the proceeds from the income taxation of Social Security and Railroad Retirement Tier 1 benefits are credited quarterly to the Old-Age and Survivors Insurance Trust Fund, the Disability Insurance Trust Fund, or the Social Security Equivalent Benefit Account (of the Railroad Retirement system), as appropriate.

House bill

In general

The House bill phases in a repeal of the higher rate of income inclusion for taxpayers with provisional incomes in excess of the second-tier threshold.

For taxable years beginning in calendar years 1996 through 1999, if the amount of provisional income exceeds the second-tier threshold, then the amount of the inclusion is calculated as under present law, except that the following rates are substituted for "85 percent":

For taxable years beginning in calendar year—	*The percentage is—*
1996	75 percent
1997	65 percent
1998	60 percent
1999	55 percent.

For taxable years beginning after December 31, 1999, Social Security and Railroad Retirement Tier 1 benefits will be treated as under the law prior to 1994: if the amount of provisional income exceeds $25,000 in the case of unmarried taxpayers or $32,000 in the case of married taxpayers filing joint returns, then the amount of the inclusion is the lesser of (1) 50 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 50 percent of the excess of the taxpayer's provisional income over the threshold.

Treatment of nonresident alien individuals

The House bill phases in a reduction in the amount of Social Security or Railroad Retirement Tier 1 benefits included in the gross income of a nonresident alien individual. The inclusion percentage for any taxable year beginning in calendar years 1996 through 1999 is as given in the table above. For taxable years beginning after December 31, 1999, the amount of Social Security or Railroad Retirement Tier 1 benefits included in the gross income of a nonresident alien individual will be 50 percent.

Trust funds

Revenues from the income taxation of Social Security and Railroad Retirement Tier 1 benefits attributable to the increased portion of benefits included in gross income under the 1993 Act (as phased out under the provision) will be credited to the Old-Age and Survivors and Disability Insurance Trust Funds.

Effective date

In general, the provision is effective for taxable years beginning after December 31, 1995. The provision crediting revenues to the Old-Age and Survivors and Disability Insurance Trust Funds applies to tax liabilities for taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

II. Savings and Investment Incentives

A. Provisions Relating to Individual Retirement Arrangements (Secs. 6103–6104 of H.R. 1215, Secs. 19002(d) and (e) of the House Bill and Secs. 12101–12103, 12111, and 12121 of the Senate Amendment)

Present law

Deductible IRA contributions

In general

An individual may make deductible contributions to an individual retirement arrangement ("IRA") up to the lesser of $2,000 or the amount of the individual's compensation if the individual is not an active participant in an employer-sponsored qualified retirement plan (and, if married, the individual's spouse also is not an active participant). An individual who makes excess contributions to an IRA, i.e., contributions in excess of $2,000, is subject to an excise tax on such excess contributions unless they are distributed from the IRA before the due date for filing the individual's tax return for the year (including extensions).

Income phase-out range

If the individual (or his or her spouse, if married) is an active participant, the $2,000 limit is phased out between $40,000 and $50,000 of adjusted gross income ("AGI") for married couples and between $25,000 and $35,000 of AGI for single individuals.

Inflation adjustment for IRA contribution limit

The $2,000 limit on IRA contributions is not indexed for inflation.

Spousal IRAs

In the case of a married individual whose spouse has no compensation (or elects to be treated as having no compensation) the $2,000 limit on IRA contributions is increased to the lesser of $2,250 or the individual's compensation.

Nondeductible tax-free IRAs

No provision. (However, present law does permit individuals to make nondeductible contributions to an IRA to the extent an individual is not permitted to (or does not) make deductible contributions. Earnings on such contributions are includible in gross income when withdrawn.)

Taxation of distributions

Amounts withdrawn from an IRA are includible in gross income (except to the extent of nondeductible contributions).

In addition, a 10-percent additional tax applies to distributions from IRAs made before age 59½, unless the distribution is on account of death or disability or is made in the form of annuity payments.

House bill

In general

The House bill permits a deductible IRA contribution of up to $2,000 to be made to an IRA for each spouse in a married couple. The House bill does not otherwise modify the rules relating to deductible IRAs.

The House bill replaces present-law nondeductible IRAs with new American Dream Savings Accounts (''ADSAs'') to which individuals can make nondeductible contributions. Contributions to an ADSA are in addition to any contributions that can be made to a deductible IRA under the present-law rules. In general, an ADSA is an IRA which is designated at the time of establishment as an ADSA. An ADSA is generally subject to the same rules applicable to IRAs, but certain special rules apply. Qualified distributions from an ADSA are not includible in income.

Deductible IRA contributions

No provision.

Spousal IRAs

The House bill permits annual contributions of up to $2,000 for each spouse in a married couple. The aggregate contributions for both spouses cannot exceed the combined compensation of both spouses.

Nondeductible tax-free IRAs

In general

The House bill replaces the present-law rules relating to nondeductible contributions with new provisions that permit individuals to make nondeductible contributions to an ADSA. Generally, ADSAs are subject to the same rules applicable to deductible IRAs. However, a number of special rules apply.

Contribution limit

The maximum annual contribution that can be made to an ADSA is the lesser of $2,000 or the individual's compensation. This amount is in addition to any contributions that may be made to present-law IRAs. The $2,000 limit is indexed annually for inflation beginning in 1996. Inflation adjustments are rounded to the nearest $50.

Contributions for nonworking spouse

The compensation of both spouses is taken into account in determining the contribution limit for each spouse.

Miscellaneous

The House bill permits contributions to be made to an ADSA after age 70½. In addition, ADSAs are not subject to the pre-death minimum distribution rules applicable to IRAs and tax-qualified plans and are not subject to the excess distribution tax applicable to distributions from IRAs and qualified plans.

Taxation of distributions

Distributions are not includible in income if the distribution (1) is made after the 5-taxable year period beginning with the first taxable year for which the individual first made a contribution to any ADSA and (2) is (a) made on or after the date on which the individual attains age 59½, (b) made to a beneficiary after the death of the individual, (c) attributable to the individual's being disabled, or (d) is for a special purpose (i.e., the purchase of a first home, higher education expenses, medical expenses, or long-term care insurance premiums). Other distributions are includible in income (to the extent of earnings on contributions) and subject to the 10-percent tax on early withdrawals unless an exception applies (see below).

Rollover contributions

Under the House bill, amounts withdrawn from IRAs can be rolled over into an ADSA after December 31, 1995, and before January 1, 1998. The amount rolled over is includible in gross income ratably over a 4-year period. The 10-percent early withdrawal tax does not apply to amounts rolled over from an IRA to an ADSA. Amounts rolled over from an IRA to an ADSA are then subject to the rules applicable to ADSAs.

Tax-free rollovers from one ADSA to another ADSA are permitted as under the present-law rules relating to IRAs.

Special purpose withdrawals

In general

Under the House bill, special purpose withdrawals from an ADSA are not subject to the 10-percent early withdrawal tax. In addition, as described above, special purpose withdrawals are not includible in income if the individual has had an ADSA account for at least 5 years. In general, special purpose withdrawals include first-time homebuyer expenses, higher education expenses, and medical expenses.

First-time homebuyer expenses

First-time homebuyer expenses of the individual are expenses used within 60 days to pay the costs of acquiring, contracting, or reconstructing the principal residence of the individual. An individual is considered a first-time homebuyer if the individual (and, if married, his or her spouse) did not own an interest in a principal residence during the prior 3 years.

Higher education expenses

Higher education expenses are tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the individual, the individual's spouse, or a child or grandchild of the individual at an eligible educational institution. The amount of higher education expenses is reduced by any amount excludable from income under the rules relating to education savings bonds.

Medical expenses

Medical expenses are defined as under the itemized deduction for medical expenses (without regard to the 7.5 percent of adjusted gross income floor), and include the expenses of the individual and his or her spouse or dependents.

Distributions to unemployed persons

No provision.

Effective date

The provision is effective for taxable years beginning after December 31, 1995.

Senate amendment

In general

The Senate amendment phases up the income limits on the deductibility of IRA contributions and modifies the definition of active participant so that an individual is not considered an active participant merely because his or her spouse is an active participant in an employer-sponsored retirement plan. The Senate amendment indexes the $2,000 IRA contribution limit for inflation.

In addition, the Senate amendment replaces present-law nondeductible IRAs with a new IRA Plus to which nondeductible contributions can be made. The limits on contributions to deductible IRAs and an IRA Plus are coordinated, so that no more than $2,000 per year can be contributed to an individual's IRAs. In general, an IRA Plus is an IRA that is designated at the time of establishment as an IRA Plus. An IRA Plus is generally subject to the same rules as IRAs, but certain special rules apply. If certain requirements are satisfied, distributions from an IRA Plus are excludable from income.

Deductible IRA contributions

In general

The Senate amendment provides that an individual is not considered an active participant for purpose of the IRA deduction rules merely because his or her spouse is an active participant in an employer-sponsored retirement plan.

Income phase-out range

Beginning in 1996, for single individuals, the Senate amendment phases up the income limits on deductible IRA contributions in $5,000 increments until the phaseout range is $85,000 to $95,000 of AGI (in 2007). Also beginning in 1996, for married couples, the deduction is phased out over a $20,000 income range (rather than $10,000) and the phase-out range is increased in $5,000 increments until the phase-out range is $100,000 to $120,000 of AGI (in 2007). After these new ranges are reached, the income limits are indexed for inflation in $5,000 increments.

Inflation adjustment for IRA contribution limit

The Senate amendment indexes the $2,000 limit on IRA contributions in $500 increments.

Spousal IRAs

The Senate amendment is the same as the House bill.

Nondeductible tax-free IRAs

In general

The Senate amendment replaces the present-law rules relating to nondeductible contributions with new provisions that permit individuals to make nondeductible contributions to an IRA Plus. In general, an IRA Plus is subject to the same rules applicable to deductible IRAs. However, a number of special rules would apply.

Contribution limit

An individual can make contributions to an IRA Plus to the extent he or she does not make deductible contributions to an IRA. For this purpose, the active participant rule is disregarded in determining the maximum deductible IRA contribution the individual is permitted to make. That is, the income limits applicable to deductible IRAs do not apply to an IRA Plus.

Contributions for nonworking spouse

The Senate amendment is the same as the House bill.

Miscellaneous

Under the Senate amendment, contributions cannot be made to an IRA Plus after age 70½, IRA Plus accounts are subject to the minimum distribution rules, and the excess distribution tax applies to distributions from an IRA Plus.

Taxation of distributions

The Senate amendment is the same as the House bill, except that the 5-year holding period is calculated differently, and the definition of special purpose withdrawals differs. (See item 6, below.) Under the Senate amendment, the 5-year holding period is satisfied if the contribution to which the distribution relates has been in the IRA Plus for at least 5 years. All contributions for a year are treated as made on January 1 of the year.

Rollover contributions

The Senate amendment permits amounts withdrawn from IRAs to be rolled over into an IRA Plus. The amount rolled over is includible in gross income in the year the withdrawal was made, except that amounts rolled over to an IRA Plus before January 1, 1998, are includible in income ratably over a 4-year period. The 10-percent early withdrawal tax does not apply to amounts rolled over from an IRA to an IRA Plus.

Tax-free rollovers from one IRA Plus to another are permitted as under the rules relating to present-law IRAs.

Special purpose withdrawals

In general

Under the Senate amendment, special purpose withdrawals from a deductible IRA are not subject to the 10-percent early withdrawal tax. In addition, as described above, special purpose withdrawals from an IRA Plus are not includible in income (or subject to the 10-percent early withdrawal tax) if made after the 5-year holding requirement is satisfied. In general, special purpose withdrawals include withdrawals for first-time homebuyer expenses (up to $10,000), higher education expenses, medical expenses in excess of 7.5 percent of AGI, and distributions to unemployed individuals.

First-time homebuyer expenses

The definition of first-time homebuyer expenses is the same under the Senate amendment as under the House bill, with the following modifications. The maximum amount that can be treated as first-time homebuyer expenses is limited to $10,000. First-time homebuyer expenses include not only the expenses of the individual account holder, but also of the individual's spouse, or a child, grandchild, or ancestor of the individual or his or her spouse (as long as that person is a first-time homebuyer). A person is considered a first-time homebuyer if the individual (and, if married, his or her spouse) did not own an interest in a principal residence during the prior 2 years and the period for tax-free rollover of the gain on a personal residence has not been extended.

Higher education expenses

The definition of higher education expenses is the same under the Senate amendment as under the House bill, except that higher education expenses include expenses of the individual's ancestors and any child, grandchild, or ancestor of the individual's spouse.

Medical expenses

The Senate amendment is the same as the House bill, except that only medical expenses in excess of 7.5 percent of AGI are treated as special purpose withdrawals. In addition, medical expenses include the expenses of a child, grandchild, or ancestor of the individual and his or her spouse, whether or not a dependent for tax purposes.

Distributions to unemployed individuals

Under the Senate amendment, distributions are treated as a special purpose distribution if the individual has received unemployment compensation for 12 weeks under Federal or State law and the distribution is made during any taxable year during which such unemployment compensation is paid or the next taxable year. A self-employed individual is treated as meeting the requirements for unemployment compensation if the individual would have received such compensation if he or she had not been self employed.

Effective date

The provision is effective for taxable years beginning after December 31, 1995.

Conference agreement

In general

In general, the conference agreement follows the Senate amendment with respect to deductible IRA contributions (with modifications), and follows the House bill with respect to nondeductible tax-free IRAs (with modifications). Under the conference agreement, nondeductible tax-free IRAs are called American Dream IRAs (AD IRA's). The conference agreement adopts the Senate amendment definition of special purpose withdrawals.

Under the conference agreement, as under the Senate amendment, an individual is not considered an active participant in an employer-sponsored retirement plan merely because his or her spouse is an active participant. As under the House bill and the Senate amendment, under the conference agreement, annual contributions of up to $2,000 can be made to an IRA for each spouse in a married couple. The conference agreement phases up the income limits on deductible IRA contributions as under the Senate amendment, except that the phase-out range for married couples is increased to $20,000 in $2,500 increments.

Under the conference agreement, the $2,000 IRA contribution limit is indexed for inflation in $500 increments.

The conference agreement replaces present-law nondeductible IRAs with new provisions that permit individuals to make contributions to an AD IRA. Amounts withdrawn from an AD IRA are not includible in gross income if the withdrawal is made after the individual has had an AD IRA for at least 5 years and the withdrawal is for a special purpose or made after the individual is age 59½.

Penalty-free withdrawals can be made for special purposes from a deductible IRA or an AD IRA. Special purposes are first-time homebuyer expenses, higher education expenses, catastrophic medical expenses, and distributions to unemployed individuals.

Deductible IRA contributions

The conference agreement follows the Senate amendment regarding deductible IRAs, with the following modifications. Beginning in 1996, the conference agreement increases the income phase-out range for married couples to $20,000 in $2,500 increments. In addition, under the conference agreement, indexing of the income thresholds (after they reach $85,000 for singles and $100,000 for couples) is in $1,000 increments.

Inflation adjustment for IRA contribution limit

The conference agreement follows the Senate amendment.

Spousal IRAs

The conference agreement follows the House bill and the Senate amendment.

Nondeductible tax-free IRAs

In general

The conference agreement generally follows the House bill with respect to nondeductible IRAs.[2] However, as under the Senate amendment, the conference agreement coordinates the limits on deductible IRAs and nondeductible IRAs. In addition, under the conference agreement, special purpose withdrawals are defined as under the Senate amendment.

Contribution limit

An individual can make contributions to all IRAs to the extent he or she does not make deductible contributions to an IRA. Thus, the maximum annual total contributions that can be made by an individual to all IRAs (including deductible IRAs and ADS IRAs) is $2,000. The income limits applicable to deductible IRAs do not apply to ADS IRAs.

Miscellaneous

The conference agreement follows the House bill. Thus, contributions can be made to an ADS IRA after age 70½, and the predeath minimum distribution rules do not apply to an ADS IRA. Distributions from an ADS IRA are not subject to the excise tax on excess distributions (sec. 4980A).

The conference agreement clarifies the application of the excise tax on excess contributions to an IRA. Under the conference agreement, the excise tax applies separately to deductible IRAs and to total contributions to deductible IRAs and ADS IRAs. Thus, the excise tax applies to contributions in excess of the amount allowable as a deduction, unless the excess contributions are distributed before the due date for the individual's tax return for the year (including extensions). It is intended that the excise tax on excess contributions to a deductible IRA does not apply to the extent the individual transfers excess contributions to an ADS IRA by such date. In such a case, the contribution is treated as made to the ADS IRA for the taxable year for which the contribution was made to the deductible IRA. In addition, the excise tax applies to total contributions to deductible IRAs and the individual's contributions to an ADS IRA (including any amounts transferred as described above). Thus, the excise tax applies if such total contributions for a year exceed $2,000 (unless the excess contributions are distributed).

Taxation of distributions

The conference agreement generally follows the House bill. Thus, amounts withdrawn from an ADS IRA are excludable from income if the withdrawal is made after the 5-taxable year period beginning with the taxable year for which the individual first makes a contribution to an ADS IRA,[3] and either (a) the individual

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[2] As under the House bill and the Senate amendment, an AD IRA is treated as an IRA, except as specifically provided. Thus, for example, the exception from the rules requiring capitalization of certain policy acquisition expenses applies to an AD IRA just as it applies to a deductible IRA.

[3] As is the case with IRAs in general, a contribution to an AD IRA for a taxable year can be made by the due date for filing the individual's tax return for the year (without regard to

has attained age 59½ or (b) the withdrawal is a special purpose withdrawal. Special purpose withdrawals made within the 5-taxable year period are includible in income (to the extent attributable to earnings), but are not subject to the 10-percent tax on early withdrawals. Other withdrawals are includible in income to the extent attributable to earnings on contributions. Distributions from an AD IRA that are not includible in income are referred to as "qualified distributions."

The conference agreement includes an ordering rule for purposes of determining what portion of a distribution that is not a qualified distribution is includible in income. Under the conference agreement, distributions are treated as made from contributions first. Thus, no portion of a distribution is treated as attributable to earnings until the total of all distributions from the AD IRA exceeds the amount of contributions.

Rollover contributions

The conference agreement follows the House bill, but clarifies that the conversion of an IRA to an AD IRA can be made without taking a distribution. For example, an individual could make the conversion by notifying the IRA trustee. Or, the individual could make the conversion in connection with a change in IRA trustees through a rollover or a trustee-to-trustee transfer. An individual can convert all or any part of the amount in an IRA into an AD IRA. If only part of the IRA account balance is converted into an AD IRA, the AD IRA amounts must be held separately.

As under the House bill, a conversion of an IRA into an AD IRA can only be made after December 31, 1996, and before January 1, 1998. The amount that would have been includible in income if the individual had withdrawn the converted amounts from the IRA is includible in income ratably over a 4-year period beginning with the year of the conversion. The trustee is required to make reports regarding the conversion and the amount involved as specified by the Treasury.[4]

Special purpose withdrawals

Under the conference agreement, special purpose withdrawals from an AD IRA or a deductible IRA are not subject to the 10-percent early withdrawal tax. Special purpose withdrawals are defined as under the Senate amendment.

Effective date

The provisions are effective for taxable years beginning after December 31, 1995.

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extensions). In such a case, the 5-year holding period begins to run with the taxable year to which the contribution relates, not the year in which the contribution is actually made.

[4] In the case of amounts attributable to a conversion of an IRA into an AD IRA, the 5-year holding period starts with the taxable year in which the conversion is made.

B. ESTABLISH SIMPLE RETIREMENT PLANS (SECS. 12131-12132 OF THE SENATE AMENDMENT)

Present law

Present law does not contain rules relating to SIMPLE retirement plans. However, present law does provide a number of ways in which individuals can save for retirement on a tax-favored basis. These include employer-sponsored retirement plans that meet the requirements of the Internal Revenue Code (a "qualified plan") and individual retirement arrangements ("IRAs"). Employees can earn significant retirement benefits under employer-sponsored retirement plans. However, in order to receive tax-favored treatment, such plans must comply with a variety of rules, including complex nondiscrimination and administrative rules (including top-heavy rules). Such plans are also subject to certain requirements under the labor law provisions of the Employee Retirement Income Security Act of 1974 ("ERISA").

IRAs are not subject to the same rules as qualified plans, but the amount that can be contributed in any year is significantly less. The maximum deductible IRA contribution for a year is limited to $2,000. Distributions from IRAs and employer-sponsored retirement plans are generally taxable when made. In addition, distributions prior to age 59½ generally are subject to an additional 10-percent early withdrawal tax.

Contributions to an IRA can also be made by an employer on behalf of employees under a simplified employee pension ("SEP"). Under SEPs, which are not qualified plans, employees can elect to have contributions made to the SEP or to receive the contributions in cash. The amount the employee elects to have contributed to the SEP is not currently includible in income. The annual amount an employee can elect to contribute to a SEP is limited to $9,240 for 1995. This dollar limit is indexed for inflation in $500 increments. The election to have amounts contributed to a SEP or received in cash is available only if at least 50 percent of the eligible employees of the employer elect to have amounts contributed to the SEP. In addition, such election is available for a taxable year only if the employer maintaining the SEP had 25 or fewer eligible employees at all times during the prior taxable year. Elective deferrals under SEP's are subject to a special nondiscrimination test.

Under one type of qualified plan that can be maintained by an employer, employees can elect to reduce their taxable compensation and have nontaxable contributions made to the plan. Such contributions are called elective deferrals, and the plans which allow such contributions are called qualified cash or deferred arrangements (or "401(k) plans"). Like SEPs, the maximum annual amount of elective deferrals that can be made by an individual is $9,240 for 1995. A special nondiscrimination test applies to elective deferrals. An employer may make contributions based on an employee's elective contributions. Such contributions are called matching contributions, and are subject to a special nondiscrimination test similar to the special nondiscrimination test applicable to elective deferrals.

House bill

No provision.

Senate amendment

In general

The Senate amendment creates a simplified retirement plan for small business called the savings incentive match plan for employees ("SIMPLE") retirement plan. SIMPLE plans can be adopted by employers who normally employ 100 or fewer employees on any day during the year and who do not maintain another employer-sponsored retirement plan. A SIMPLE plan can be either an IRA for each employee or part of a qualified cash or deferred arrangement ("401(k) plan"). If established in IRA form, a SIMPLE plan is not subject to the nondiscrimination rules generally applicable to qualified plans (including the top-heavy rules) and simplified reporting requirements apply. Within limits, contributions to a SIMPLE plan are not taxable until withdrawn. A SIMPLE plan is subject to certain provisions contained in Parts 1 and 4, Subtitle B, Title I of ERISA.

A SIMPLE plan can also be adopted as part of a 401(k) plan. In that case, the plan does not have to satisfy the special nondiscrimination tests applicable to 401(k) plans and is not subject to the top-heavy rules. The other qualified plan rules continue to apply. A simple plan adopted as part of a 401(k) plan is subject to the provisions contained in Subtitle B, Title I of ERISA applicable to qualified plans.

SIMPLE retirement plans in IRA form

In general

A SIMPLE retirement plan allows employees to make elective contributions to an IRA. Employee contributions have to be expressed as a percentage of the employee's compensation, and cannot exceed $6,000 per year. The $6,000 dollar limit is indexed for inflation in $500 increments.

The employer generally is required to match employee elective contributions on a dollar- for-dollar basis up to 3 percent of the employee's compensation. Under a special rule, the employer can elect a lower percentage matching contribution for all employees (but not less than 1 percent of each employee's compensation). In order for the employer to lower the matching percentage, the employer must notify employees of the applicable match within a reasonable time before the 60-day election period for the year (described below). In addition, a lower percentage cannot be elected for more than 2 out of any 5 years. No contributions other than employee elective contributions and employer matching contributions can be made to a SIMPLE account.

Only employers who normally employ 100 or fewer employees on any day during the year and who do not currently maintain a qualified plan can establish SIMPLE retirement accounts for their employees.

Each employee of the employer who received at least $5,000 in compensation from the employer during each of the 2 preceding years and who is reasonably expected to receive at least $5,000 in compensation during the year must be eligible to participate in the SIMPLE plan. Nonresident aliens and employees covered under a collective bargaining agreement do not have to be eligible to participate in the SIMPLE plan. Self-employed individuals can participate in a SIMPLE plan.

All contributions to an employee's SIMPLE account must be fully vested.

Distributions from a SIMPLE plan generally are taxed as under the rules relating to IRAs, except that an increased early withdrawal tax (25 percent) applies to distributions within the first 2 years the SIMPLE is established.

Tax treatment of SIMPLE accounts, contributions, and distributions

Contributions to a SIMPLE account generally are deductible by the employer. In the case of matching contributions, the employer is allowed a deduction for a year only if the contributions are made by the due date (including extensions) for the employer's tax return. Contributions to a SIMPLE account are excludable from the employee's income. SIMPLE accounts, like IRAs, are not subject to tax. Distributions from a SIMPLE retirement account generally are taxed under the rules applicable to IRAs. Thus, they are includible in income when withdrawn. Tax-free rollovers can be made from one SIMPLE account to another. To the extent an employee is no longer participating in a SIMPLE plan (e.g., the employee has terminated employment), the employee's SIMPLE account shall be treated as an IRA.

Early withdrawals from a SIMPLE account generally are subject to the 10-percent early withdrawal tax applicable to IRAs. However, withdrawals of contributions during the 2-year period beginning on the date the employee first participated in the SIMPLE plan are subject to a 25-percent early withdrawal tax (rather than 10 percent).

Administrative requirements

Each eligible employee can elect, within the 60-day period before the beginning of the year, to participate in the SIMPLE plan (i.e., to make elective deferrals), and to modify any previous elections regarding the amount of contributions. An employer is required to contribute employees' elective deferrals to the employee's SIMPLE account within 30 days after the end of the month to which the contributions relate. Employees must be allowed to terminate participation in the SIMPLE plan at any time during the year (i.e., to stop making contributions). The plan could provide that an employee who terminates participation could not resume participation until the following year. A plan can permit (but is not required to permit) an individual to make other changes to his or her salary reduction contribution election during the year (e.g., reduce contributions).

No fee can be imposed on the employee with respect to the employee's initial investment decision with respect to any contributions. This rule is not intended to preclude the imposition of a reasonable fee based on the rate of return on assets held in a SIMPLE account.

Reporting requirements

Trustee requirements.—The trustee of a SIMPLE account is required each year to prepare, and provide to the employer maintaining the SIMPLE plan, a summary description containing the following basic information about the plan: the name and address of the employer and the trustee; the requirements for eligibility; the benefits provided under the plan; the time and method of making salary reduction elections; and the procedures for and effects of, withdrawals from the SIMPLE account. At least once a year, the trustee also is required to furnish an account statement to each individual maintaining a SIMPLE account. In addition, the trustee is required to file an annual report with the Secretary. A trustee who fails to provide any of such reports or descriptions is subject to a penalty of $50 per day until such failure is corrected, unless the failure is due to reasonable cause.

Employer reports.—The employer maintaining a SIMPLE plan is required to notify each employee of the employee's opportunity to make salary reduction contributions under the plan immediately before the employee becomes eligible to make such election. This notice must include a copy of the summary description prepared by the trustee. An employer who fails to provide such notice is subject to a penalty of $50 per day on which such failure continues, unless the failure is due to reasonable cause.

Definitions

For purposes of the rules relating to SIMPLE plans, compensation is compensation required to be reported by the employer on Form W-2, plus any elective deferrals of the employee. In the case of a self-employed individual, compensation is net earnings from self-employment. "Employer" includes the employer and related employers. Related employers include trades or businesses under common control (whether incorporated or not), controlled groups of corporations, and affiliated service groups. In addition, the leased employee rules apply.

For purposes of the rule prohibiting an employer from establishing a SIMPLE plan, if the employer has another qualified plan, an employer is treated as maintaining a qualified plan if the employer (or a predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, with respect to service for any year in the period beginning with the year the SIMPLE plan became effective and ending with the year for which the determination is being made. A qualified plan includes a qualified retirement plan, a qualified annuity plan, a governmental plan, a tax-sheltered annuity, and a simplified employee pension.

SIMPLE 401(k) plans

In general, under the Senate amendment, a cash or deferred arrangement (i.e., 401(k) plan), is deemed to satisfy the special nondiscrimination tests applicable to employee elective deferrals and employer matching contributions if the plan satisfies the contribution requirements applicable to SIMPLE plans. In addition, the plan is not subject to the top-heavy rules for any year for which this safe harbor is satisfied. The plan is subject to the other qualified plan rules.

The safe harbor is satisfied if, for the year, the employer does not maintain another qualified plan and (1) employee's elective deferrals are limited to no more than $6,000, (2) the employer matches employees' elective deferrals up to 3 percent of compensation, and (3) no other contributions are made to the arrangement. Contributions under the safe harbor must be 100 percent vested. The employer cannot reduce the matching percentage below 3 percent of compensation.

Effective date

The provisions relating to SIMPLE plans are effective for years beginning after December 31, 1995.

Conference agreement

SIMPLE retirement plans in IRA form

The conference agreement follows the Senate amendment with the following modifications. An employer is eligible to maintain a SIMPLE plan if the employer employs 100 or fewer employees on any day during the year. An employee must be eligible to participate in the SIMPLE plan in a year if the employee received at least $5,000 in compensation from the employer during any two prior years and the employee is reasonably expected to receive at least $5,000 in compensation in the current year. The prohibition on fees with respect to an employee's initial investment decision with respect to any contributions is eliminated. A SIMPLE account may be rolled over to an individual retirement arrangement ("IRA") on a tax-free basis after a two-year period has expired since the individual first participated in the SIMPLE plan. The conference agreement also clarifies that the summary description required to be prepared by the trustee of a SIMPLE account must provide information on rolling over amounts from a SIMPLE account.

The conference agreement also amends parts 1 and 4, Subtitle B, Title I of ERISA so that only simplified reporting requirements apply to SIMPLE plans and so that the employer will not be subject to fiduciary liability resulting from the employee (or beneficiary) exercising control over the assets in the SIMPLE account. For this purpose, an employee (or beneficiary) is treated as exercising control over the assets in his or her account upon the earlier of (1) an affirmative election with respect to the initial investment of any contributions, (2) a rollover contribution (including a trustee-to-trustee transfer) to another SIMPLE account or IRA, or (3) one year after the SIMPLE account is established.

It is intended that an employee's elective contributions, but not an employer's matching contributions, to a SIMPLE account are to be treated as wages for employment tax purposes.

SIMPLE 401(k) plans

The conference agreement follows the Senate amendment.

Repeal of SEPs

Under the conference agreement, the present-law rules governing SEPs will no longer apply after December 31, 1995, unless the SEP was established before January 1, 1996. Consequently, an employer will not be permitted to establish a SEP after December 31, 1995. SEPs established before January 1, 1996, may continue to receive contributions under present-law rules, and new employees of the employer hired after December 31, 1995, may participate in the SEP in accordance with such rules.

Effective date

The conference agreement follows the Senate amendment.

C. CAPITAL GAINS PROVISIONS

1. INDIVIDUAL CAPITAL GAINS (SEC. 6301 OF H.R. 1215 AND SEC. 12141 OF THE SENATE AMENDMENT)

Present law

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of capital assets, the net capital gain is taxed at the same rate as ordinary income, except that individuals are subject to a maximum marginal rate of 28 percent of the net capital gain. Net capital gain is the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

Prior to the enactment of the Tax Reform Act of 1986, individuals were allowed a deduction equal to 60 percent of net capital gain. The deduction resulted in a maximum effective tax rate of 20 percent on such gains.

Capital losses are generally deductible in full against capital gains. In addition, individuals may deduct capital losses against up to $3,000 of ordinary income in each year. Capital losses in excess of the amount deductible are carried forward indefinitely. Prior to the Tax Reform Act of 1986, individuals were required to use two dollars of long-term capital loss to offset each dollar of ordinary income.

An alternative minimum tax is imposed at rates up to 28 percent on alternative minimum taxable income (AMTI), which is taxable income plus tax adjustments and preferences. Capital gains are included in AMTI.

House bill

The House bill allows individuals a deduction equal to 50 percent of net capital gain for the taxable year. The House bill makes the present-law maximum 28-percent rate inapplicable. Thus, under the House bill, the effective rate under the regular tax on the net capital gain of an individual in the highest (i.e., 39.6 percent) marginal rate bracket is 19.8 percent.

Collectibles are excluded from net capital gain. A maximum rate of 28 percent applies to the net gain from the sale or exchange of collectibles held for more than one year (unless the individual indexes the basis of the collectible, as described below).

The House bill reinstates the rule in effect prior to the Tax Reform Act of 1986 that required two dollars of the long-term capital loss of an individual to offset one dollar of ordinary income. The $3,000 limitation on the deduction of capital losses against ordinary income would continue to apply.

Effective date.—The provision generally applies to sales and exchanges (and installment payments received) after December 31, 1994. The capital loss rule does not apply to losses arising in taxable years beginning before January 1, 1996.

Senate amendment

The Senate amendment is the same as the House bill, except that one-half of the capital gains deduction is a preference for purposes of the alternative minimum tax. Also, the 28-percent rate for collectibles does not require an election to forgo indexing (as the Senate amendment contains no indexing provision).

Effective date.—The provision generally applies to sales and exchanges (and installment payments received) after October 13, 1995. The capital loss rule is effective the same as in the House bill.

Conference agreement

The conference agreement follows the House bill.

2. SMALL BUSINESS STOCK (SEC. 6301 OF H.R. 1215 AND SECS. 12142–12143 OF THE SENATE AMENDMENT)

Present law

The Revenue Reconciliation Act of 1993 provided individuals a 50-percent exclusion for the sale of certain small business stock acquired at original issue and held for at least five years. One-half of the excluded gain is a minimum tax preference.

The amount of gain eligible for the 50-percent exclusion by an individual with respect to any corporation is the greater of (1) ten times the taxpayer's basis in the stock or (2) $10 million.

In order to qualify as a small business, when the stock is issued, the gross assets of the corporation may not exceed $50 million. The corporation also must meet an active trade or business requirement.

House bill

The House bill repeals the exclusion for small business stock.

Effective date.—A taxpayer holding small business stock on the date of enactment may elect, within one year from the date of enactment, to have the provisions of present law (rather than the provisions of the House bill) apply to any gain from the sale of the stock.

Senate amendment

The taxable portion of the gain from the sale of small business stock is eligible for the individual capital gains deduction added by the Senate amendment. Thus, only 25 percent of the gain from a qualified sale of small business stock is subject to tax. The effective rate under the regular tax on the gain of an individual in the highest (i.e., 39.6 percent) marginal rate bracket is 9.9 percent.

The Senate amendment increases the size of an eligible corporation from gross assets of $50 million to gross assets of $100 million. The Senate amendment also repeals the limitation on the amount of gain an individual can exclude with respect to the stock of any corporation.

The Senate amendment provides that certain working capital must be expended within five years (rather than two years) in order to be treated as used in the active conduct of a trade or business. No limit on the percent of the corporation's assets that are working capital is imposed.

The Senate amendment provides that if the corporation establishes a business purpose for a redemption of its stock, that redemption is disregarded in determining whether other newly issued stock can qualify as eligible stock.

The Senate amendment allows an individual to roll over gain from the sale or exchange of small business stock otherwise qualifying for the exclusion where the individual uses the proceeds to purchase other qualifying small business stock within 60 days of the sale of the original stock. If the individual sells the replacement stock, the gain attributable to the original stock is eligible for the small business stock exclusion and the capital gain deduction, and any remaining gain is eligible for the capital gain deduction if held more than one year and the small business exclusion if held for at least five years. In addition, any gain that otherwise would be recognized from the sale of the replacement stock can be rolled over to other small business stock purchased within 60 days.

Effective date.—The increase in the size of corporations whose stock is eligible for the exclusion applies to stock issued after the date of the enactment of the proposal. The remaining provisions apply to stock issued after August 10, 1993 (the original effective date of the small business stock provision).

Conference agreement

The conference agreement generally follows the Senate amendment.

Under the conference agreement, the maximum rate of tax on qualifying gain from the sale of small business stock by a taxpayer other than a corporation is 14 percent. The conference agreement repeals the present-law 50-percent exclusion for gain from qualifying small business stock, since that gain will be eligible for the 50-percent capital gains deduction that is generally applicable to gain recognized by individual taxpayers as provided for by the conference agreement. In addition, the conference agreement repeals the minimum tax preference for gain from the sale of small business stock.

The conference agreement does not contain the rollover provision in the Senate amendment.

3. INDEXING OF CAPITAL GAINS (SEC. 6302 OF H.R. 1215)

Present law

Under present law, a taxpayer's gain or loss from the disposition of an asset is determined without regard to any adjustment for inflation.

House bill

The House bill allows a taxpayer other than a C corporation to index the basis of certain assets for purposes of determining gain (but not loss) upon the sale or other disposition of the assets.

Assets eligible for indexing generally include common stock of C corporations and tangible property that are capital assets or property used in a trade or business and which are held more than three years.

The inflation adjustment is computed by multiplying the taxpayer's adjusted basis in the indexed asset by an index based on changes in the GDP deflator.

Special rules are provided for RICS, REITS, partnerships, S corporations and common trust funds.

Effective date.—The provision applies to property the holding period of which begins after December 31, 1994, and to principal residences held on January 1, 1995 (for inflation after that date). A taxpayer holding an indexed asset (other than a principal residence) on January 1, 1995, may elect to treat the asset as having been sold (and reacquired) on that date for its fair market value, i.e., "marked to market." If the election is made, any gain is recognized (and any loss is disallowed).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill except that the effective date is for assets acquired on or after, and principal residences held on, January 1, 2001 (rather than January 1, 1995), for inflation after that date. The date of the "mark to market" election under the House bill is also moved forward from January 1, 1995, to January 1, 2001. The election will apply to eligible assets held on January 1, 2001.

4. CORPORATE CAPITAL GAINS (SEC. 6311 OF H.R. 1215 AND SEC. 12151 OF THE SENATE AMENDMENT)

Present law

Under present law, the net capital gain of a corporation is taxed at the same rate as ordinary income, and subject to tax at graduated rates up to 35 percent. Prior to the Tax Reform Act of 1986, the net capital gain of a corporation was subject to an alternative tax rate of 28 percent.

House bill

The House bill provides an alternative tax of 25 percent on the net capital gain of a corporation if that rate is less than the corporation's regular tax rate.

Effective date.—The provision generally applies to sales and exchanges (and installment payments received) after December 31, 1994.

Senate amendment

The Senate amendment provides an alternative rate of 28 percent on the net capital gain of a corporation if that rate is less than the corporation's regular tax rate.

The Senate amendment also provides an alternative rate of 21 percent on the gain from the sale or exchange of qualified small business stock (other than stock of a subsidiary corporation) held more than five years.

Effective date.—The provision generally applies to sales and exchanges (and installment payments received) after October 13, 1995. The small business stock provision applies to stock issued after date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, except that the 28-percent rate is effective the same as in the House bill.

5. CAPITAL LOSS DEDUCTION ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE (SEC. 6316 OF H.R. 1215)

Present law

Under present law, the sale or exchange of a principal residence is treated as a nondeductible personal loss.

House bill

The House bill provides that a loss from the sale or exchange of a principal residence is treated as a deductible capital loss.

Effective date.—The provision applies to sales and exchanges after December 31, 1994.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

D. ALTERNATIVE MINIMUM TAX (AMT) PROVISIONS (SEC. 19002(F) OF THE HOUSE BILL AND SECS. 12161 AND 12162 OF THE SENATE AMENDMENT)

Present law

Present law imposes an alternative minimum tax ("AMT") on an individual or a corporation to the extent the taxpayer's tentative minimum tax exceeds its regular tax liability. The individual minimum tax is imposed at graduated rates of 26 and 28 percent on alternative minimum taxable income in excess of a phased-out exemption amount; the corporate minimum tax is imposed at a rate of 20 percent on alternative minimum taxable income in excess of a phased-out $40,000 exemption amount. Alternative minimum taxable income (''AMTI'') is the taxpayer's taxable income increased by certain preference items and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items.

Individuals and corporations must adjust their regular tax depreciation deductions in computing their AMTI. Under the AMT, depreciation on property placed in service after 1986 must be computed by using the class lives prescribed by the alternative depreciation system of section 168(g) and either (1) the straight-line method in the case of property subject to the straight-line method under the regular tax or (2) the 150-percent declining balance method in the case of other property. Under the regular tax, depreciation on such property generally is determined using shorter recovery periods and more accelerated recovery methods.

If a taxpayer is subject to the AMT in one year, such amount of tax is allowed as a credit (''AMT credit'') in a subsequent taxable year to the extent the taxpayer's regular tax liability exceeds its tentative minimum tax in such subsequent year. If the taxpayer is an individual, the AMT credit is allowed to the extent the taxpayer's AMT liability is a result of adjustments that are timing in nature (e.g., the adjustment for depreciation). The AMT credit has an unlimited carryforward but cannot be carried back.

House bill

The House bill eliminates the depreciation adjustment of the individual AMT and reduces the corporate AMT rate to zero.

Effective date.—The provision is effective for taxable years beginning after December 31, 1994. The effects of the two modifications are suspended for taxable years beginning in 1995 and 1996. These suspended amounts are refunded ratably as credits for the first three taxable years beginning after 1996.

Senate amendment

For purposes of the individual and corporate AMTs, the Senate amendment conforms the AMT depreciation method to the regular tax method. Thus, property that is recovered using the 200-percent declining balance method for regular tax purposes (generally, shorter-lived tangible personal property) will use that method under the AMT. The Senate amendment does not change the class lives applicable to any property for AMT purposes.

In addition, the Senate amendment allows a corporation with certain AMT credits to offset a portion of its tentative minimum tax in excess of its regular tax. The portion so allowed would be the least of: (1) the amount of the taxpayer's long-term minimum tax credit (i.e., those credits that arose at least five years ago); (2) 50 percent of the taxpayer's tentative minimum tax; or (3) the amount by which the taxpayer's tentative minimum tax exceeds it regular tax for the year.

Effective date.—The depreciation provision is effective for property placed in service after December 31, 1995. The AMT credit provision is effective for taxable years beginning after December 31, 1995.

Conference agreement

The conference agreement repeals the depreciation adjustment for purposes of both the individual and corporate AMT for property placed in service after December 31, 1995. Thus, the conference agreement conforms the AMT depreciation methods and lives to the depreciation methods and lives used for regular tax purposes for property placed in service after 1995.

In addition, the conference agreement follows the Senate amendment with respect to the AMT credit, except that under the agreement, the amount of the taxpayer's long-term minimum tax credit will be those credits that arose at least seven (rather than five) years ago.

E. COST RECOVERY PROVISIONS

1. TREATMENT OF LEASEHOLD IMPROVEMENTS (SEC. 6322 OF H.R. 1215)

Present law

Depreciation of leasehold improvements

Improvements made on leased property are depreciated under the modified Accelerated Cost Recovery System ("MACRS"), even if the MACRS recovery period assigned to the property is longer than the term of the lease (sec. 168(i)(8)). This rule applies regardless whether the lessor or lessee places the leasehold improvements in service. If a leasehold improvement constitutes an addition or improvement to nonresidential real property already placed in service, the improvement is depreciated using the straight-line method over a 39-year recovery period, beginning in the month the addition or improvement was placed in service (secs. 168(b)(3), (c)(1), (d)(2), and (i)(6)).

Treatment of dispositions of leasehold improvements

A taxpayer generally recovers the adjusted basis of property for purposes of determining gain or loss upon the disposition of the property. Upon the termination of a lease, the adjusted basis of leasehold improvements that were made, but are not retained, by a lessee are taken into account to compute gain or loss by the lessee. The proper treatment of the adjusted basis of improvements made by a lessor upon termination of a lease is less clear. Proposed Treasury regulation section 1.168-2(e)(1) provides that the unadjusted basis of a building's structural components must be recovered as whole. In addition, proposed Treasury regulation sections 1.168-2(l)(1) and 1.168-6(b) provide that "disposition" does not include the retirement of a structural component of real property if there is no disposition of the underlying building. Thus, it appears that it is the position of the Internal Revenue Service that leasehold improvements made by a lessor that constitute structural components of a building must be continued to be depreciated in the same manner as the underlying real property, even if such improvements are retired at the end of the lease term. Some lessors, on the other hand, may be taking the position that a leasehold improvement is a property separate and distinct from the underlying building and that an abandonment loss under section 165 is allowable at the end of the lease term for the adjusted basis of the property. In addition, lessors may argue that even if a leasehold improvement constitutes a structural component of a building, proposed Treasury regulation section 1.168-2(l)(1) (that seemingly denies the deduction at the end of the lease term) applies only to retirements, but not abandonments or demolitions, of such property. Thus, it appears that some lessors take the position that, at least in certain circumstances, the adjusted basis of leasehold improvements may be recovered at the end of the term of the lease to which the improvements relate even if there is no disposition of the underlying building.

House bill

Under the House bill, a lessor of leased property that disposes of a leasehold improvement which was made by the lessor for the lessee of the property may take the adjusted basis of the improvement into account for purposes of determining gain or loss if the improvement is irrevocably disposed of or abandoned by the lessee at the termination of the lease. The provision thus conforms the treatment of lessors and lessees with respect to leasehold improvements disposed of at the end of a term of lease.

For purposes of applying the provision, it is expected that a lessor must be able to separately account for the adjusted basis of the leasehold improvement that is irrevocably disposed of or abandoned.

Effective date.—The provision is effective for leasehold improvements disposed of after March 13, 1995. No inference is intended as to the proper treatment of such dispositions before March 14, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill provision.

2. INCREASE IN EXPENSING FOR SMALL BUSINESSES (SEC. 6352 OF H.R. 1215)

Present law

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $17,500 of the cost of qualifying property placed in service for the taxable year (sec. 179).[5] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $17,500 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. In addition, the amount eligible to be expensed for a taxable year may

[5] The amount permitted to be expensed under Code section 179 is increased by up to an additional $20,000 for certain property placed in service by a business located in an empowerment zone (sec. 1397A).

not exceed the taxable income of the taxpayer for the year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations).

House bill

The House bill increases the $17,500 amount allowed to be expensed under Code section 179 to $35,000. The increase is phased in as follows:

Taxable year beginning in—	*Maximum expensing*
1996	$22,500
1997	27,500
1998	32,500
1999 and thereafter	35,000

Effective date.—The provision is effective for property placed in service in taxable years beginning after December 31, 1995, subject to the phase-in schedule set forth above.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except that the maximum expensing limits and phase-in schedule are modified as follows:

Taxable year beginning in—	*Maximum expensing*
1996	$19,000
1997	20,000
1998	21,000
1999	22,000
2000	23,000
2001	24,000
2002 and thereafter	25,000

Effective date.—The provision is effective for property placed in service in taxable years beginning after December 31, 1995, subject to the phase-in schedule set forth above.

F. HOME OFFICE DEDUCTION: CLARIFICATION OF DEFINITION OF PRINCIPAL PLACE OF BUSINESS; TREATMENT OF STORAGE OF PRODUCT SAMPLES (SECS. 6353 AND 6354 OF H.R. 1215)

Present law

A taxpayer's business use of his or her home may give rise to a deduction for the business portion of expenses related to operating the home (e.g., a portion of rent or depreciation and repairs). Code section 280A(c)(1) provides, however, that business deductions generally are allowed only with respect to a portion of a home that is used exclusively and regularly in one of the following ways: (1) as the principal place of business for a trade or business; (2) as a place of business used to meet with patients, clients, or customers in the normal course of the taxpayer's trade or business; or (3) in connection with the taxpayer's trade or business, if the portion so used constitutes a separate structure not attached to the dwelling unit. In the case of an employee, the Code further requires that the business use of the home must be for the convenience of the employer (sec. 280A(c)(1)).[6] These rules apply to houses, apartments, condominiums, mobile homes, boats, and other similar property used as the taxpayer's home (sec. 280A(f)(1)). Under Internal Revenue Service (IRS) rulings, the deductibility of expenses incurred for local transportation between a taxpayer's home and a work location sometimes depends on whether the taxpayer's home office qualifies under section 280A(c)(1) as a principal place of business (see Rev. Rul. 94–47, 1994–29 I.R.B. 6).

Prior to 1976, expenses attributable to the business use of a residence were deductible whenever they were "appropriate and helpful" to the taxpayer's business. In 1976, Congress adopted section 280A, in order to provide a narrower scope for the home office deduction, but did not define the term "principal place of business." In *Commissioner* v. *Soliman*, 113 S.Ct. 701 (1993), the Supreme Court reversed lower court rulings and upheld an IRS interpretation of section 280A that disallowed a home office deduction for a self-employed anesthesiologist who practiced at several hospitals but was not provided office space at the hospitals. Although the anesthesiologist used a room in his home exclusively to perform administrative and management activities for his profession (i.e., he spent two or three hours a day in his home office on bookkeeping, correspondence, reading medical journals, and communicating with surgeons, patients, and insurance companies), the Supreme Court upheld the IRS position that the "principal place of business" for the taxpayer was not the home office, because the taxpayer performed the "essence of the professional service" at the hospitals.[7] Because the taxpayer did not meet with patients at his home office and the room was not a separate structure, a deduction was not available under the second or third exception under section 280A(c)(1) (described above).

Section 280A(c)(2) contains a special rule that allows a home office deduction for business expenses related to a space within a home that is used on a regular (even if not exclusive) basis as a storage unit for the inventory of the taxpayer's trade or business of selling products at retail or wholesale, but only if the home is the sole fixed location of such trade or business.

Home office deductions may not be claimed if they create (or increase) a net loss from a business activity, although such deductions may be carried over to subsequent taxable years (sec. 280A(c)(5)).

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[6] If an employer provides access to suitable space on the employer's premises for the conduct by an employee of particular duties, then, if the employee opts to conduct such duties at home as a matter of personal preference, the employee's use of the home office is not "for the convenience of the employer." See, e.g., *W. Michael Mathes,* (1990) T.C. Memo 1990–483.

[7] In response to the Supreme Court's decision in *Soliman*, the IRS revised its *Publication 587, Business Use of Your Home,* to more closely follow the comparative analysis used in *Soliman* by focusing on the following two primary factors in determining whether a home office is a taxpayer's principal place of business: (1) the relative importance of the activities performed at each business location; and (2) the amount of time spent at each location.

House bill

Definition of principal place of business

The House bill amends present-law section 280A to specifically provide that a home office qualifies as the "principal place of business" if (1) the office is used by the taxpayer to conduct administrative or management activities of a trade or business and (2) there is no other fixed location of the trade or business where the taxpayer conducts substantial administrative or management activities of the trade or business. As under present law, deductions will be allowed for a home office meeting the above two-part test only if the office is exclusively used on a regular basis as a place of business by the taxpayer, and in the case of an employee, only if such exclusive use is for the convenience of the employer.

Thus, under the House bill, a home office deduction will be allowed (subject to the present-law "convenience of the employer" rule governing employees) if a portion of a taxpayer's home is exclusively and regularly used to conduct administrative or management activities for a trade or business of the taxpayer, who does not conduct substantial administrative or management activities at any other fixed location of the trade or business, regardless of whether administrative or management activities connected with his trade or business (e.g., billing activities) are performed by others at other locations. The fact that a taxpayer also carries out administrative or management activities at sites that are not fixed locations of the business, such as a car or hotel room, will not affect the taxpayer's ability to claim a home office deduction under the provision. Moreover, if a taxpayer conducts some administrative or management activities at a fixed location of the business outside the home, the taxpayer still will be eligible to claim a deduction so long as the administrative or management activities conducted at any fixed location of the business outside the home are not substantial (e.g., the taxpayer occasionally does minimal paperwork at another fixed location of the business). In addition, a taxpayer's eligibility to claim a home office deduction under the provision will not be affected by the fact that the taxpayer conducts substantial *non-administrative* or *non-management* business activities at a fixed location of the business outside the home (e.g., meeting with, or providing services to, customers, clients, or patients at a fixed location of the business away from home).

If a taxpayer *in fact* does not perform substantial administrative or management activities at any fixed location of the business away from home, then the second prong of the provision is satisfied, regardless of whether or not the taxpayer opted not to use an office away from home that was available for the conduct of such activities. However, in the case of an employee, the question whether an employee *opted* not to use suitable space made available by the employer for administrative activities is relevant to determining whether the present-law "convenience of the employer" test is satisfied. In cases where a taxpayer's use of a home office does not satisfy the provision's two-part test, the taxpayer nonetheless may be able to claim a home office deduction under the present-law "principal place of business" exception or any other provision of section 280A.

Treatment of storage of product samples

In addition, the House bill clarifies that the special rule contained in present-law section 280A(c)(2) permits deductions for expenses related to a storage unit in a taxpayer's home regularly used for inventory or product samples (or both) of the taxpayer's trade or business of selling products at retail or wholesale, provided that the home is the sole fixed location of such trade or business.

Effective date

The House bill provisions governing home office expense deductions apply to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

Definition of principal place of business

The conference agreement does not include the House bill provision that amends the definition of "principal place of business."

Treatment of storage of product samples

The conference agreement includes the House bill provision that clarifies that present-law section 280A(c)(2) applies to storage of inventory or product samples (or both) in a taxpayer's home.

Effective date

The provision applies to taxable years beginning after December 31, 1995.

III. HEALTH CARE-RELATED PROVISIONS

A. TREATMENT OF LONG-TERM CARE INSURANCE (SECS. 6211–6214 AND 6231–6232 OF H.R. 1215 AND SECS. 12201–12204 AND 12211–12214 OF THE SENATE AMENDMENT)

Present law

In general

Present law generally does not provide explicit rules relating to the tax treatment of long-term care insurance contracts or long-term care services. Thus, the treatment of long-term care contracts and services is unclear. Present law does provide rules relating to medical expenses and accident or health insurance.

Itemized deduction for medical expenses

In determining taxable income for Federal income tax purposes, a taxpayer is allowed an itemized deduction for unreimbursed expenses that are paid by the taxpayer during the taxable year for medical care of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer, to the extent that such expenses exceed 7.5 percent of the adjusted gross income of the taxpayer for such year (sec. 213). For this purpose, expenses paid for medical care generally are defined as amounts paid: (1) for the diagnosis, cure, mitigation, treatment, or prevention of disease (including prescription medicines or drugs and insulin), or for the purpose of affecting any structure or function of the body (other than cosmetic surgery not related to disease, deformity, or accident); (2) for transportation primarily for, and essential to, medical care referred to in (1); or (3) for insurance (including Part B Medicare premiums) covering medical care referred to in (1) and (2).

Exclusion for amounts received under accident or health insurance

Amounts received by a taxpayer under accident or health insurance for personal injuries or sickness generally are excluded from gross income to the extent that the amounts received are not attributable to medical expenses that were allowed as a deduction for a prior taxable year (sec. 104).

Treatment of accident or health plans maintained by employers

Contributions of an employer to an accident or health plan that provides compensation (through insurance or otherwise) to an employee for personal injuries or sickness of the employee, the employee's spouse, or a dependent of the employee, are excluded from the gross income of the employee (sec. 106). In addition, amounts received by an employee under such a plan generally are excluded from gross income to the extent that the amounts received are paid, directly or indirectly, to reimburse the employee for expenses for the medical care of the employee, the employee's spouse, or a dependent of the employee (sec. 105). For this purpose, expenses incurred for medical care are defined in the same manner as under the rules regarding the deduction for medical expenses.

A cafeteria plan is an employer-sponsored arrangement under which employees can elect among cash and certain employer-provided qualified benefits. No amount is included in the gross income of a participant in a cafeteria plan merely because the participant has the opportunity to make such an election (sec. 125). Employer-provided accident or health coverage is one of the benefits that may be offered under a cafeteria plan.

A flexible spending arrangement (FSA) is an arrangement under which an employee is reimbursed for medical expenses or other nontaxable employer-provided benefits, such as dependent care, and under which the maximum amount of reimbursement that is reasonably available to a participant for a period of coverage is not substantially in excess of the total premium (including both employee-paid and employer-paid portions of the premium) for such participant's coverage. Under proposed Treasury regulations, a maximum amount of reimbursement is not substantially in excess of the total premium if such maximum amount is less than 500 percent of the premium. An FSA may be part of a cafeteria plan or provided by an employer outside a cafeteria plan. FSAs are commonly used to reimburse employees for medical expenses not covered by insurance. If certain requirements are satisfied,[8] amounts

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[8] These requirements include a requirement that a health FSA can only provide reimbursement for medical expenses (as defined in sec. 213) and cannot provide reimbursement for pre-

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reimbursed for nontaxable benefits from an FSA are excludable from income.

Health care continuation rules

The health care continuation rules require that an employer must provide qualified beneficiaries the opportunity to continue to participate for a specified period in the employer's health plan after the occurrence of certain events (such as termination of employment) that would have terminated such participation (sec. 4980B). Individuals electing continuation coverage can be required to pay for such coverage.

Life insurance company reserve rules

In general, life insurance companies are allowed a deduction for a net increase in reserves and must take into income any net decreases in reserves (sec. 807(a) and (b)). Present law prescribes a tax reserve method based on the nature of the contract. For noncancellable accident and health insurance contracts, the prescribed method is a two-year full preliminary term method (sec. 807(d)(3)(A)(iii)). Long-term care insurance reserves are treated like noncancellable accident and health insurance for this purpose and, therefore, are determined under the two-year full preliminary term method. In no event is the tax reserve for any contract as of any time permitted to exceed the amount which would be taken into account in determining statutory reserves as set forth on the annual statement (sec 807(d)(1)).

The amount of any adjustment, whether an increase or a reduction in income, that is attributable to a change in the basis for determining reserves (or for determining any other item referred to in sec. 807(c)) is generally spread over a 10-year period (sec. 807(f)).

House bill

Tax treatment and definition of long-term care insurance contracts and qualified long-term care services

In general

Under the House bill, a long-term care insurance contract is accorded the following tax treatment. A long-term care insurance contract generally is treated as an accident and health insurance contract. Amounts (other than policyholder dividends or premium refunds) received under a long-term care insurance contract generally are excludable as amounts received for personal injuries and sickness (subject to a cap of $200 per day, or $73,000 annually). This cap is indexed by the medical care cost component of the consumer price index.

A plan of an employer providing coverage under a long-term care insurance contract generally is treated as an accident and health plan; however, coverage under a long-term care insurance contract is not excludable by an employee if provided through a caf-

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mium payments for other health coverage and that the maximum amount of reimbursement under a health FSA must be available at all times during the period of coverage.

eteria plan; similarly, expenses for long-term care services cannot be reimbursed under an FSA.[9]

The deduction for a percentage of health insurance expenses of self-employed individuals was permanently extended (at 30 percent) by P.L. 104–7 (April 11, 1995). Because the bill treats long-term care insurance as health insurance, the deduction for 30 percent of health insurance expenses of self-employed individuals applies to long-term care insurance premiums under the bill.

Within certain limits, premiums for long-term care insurance are treated as medical expenses for purposes of the itemized deduction for medical expenses.[10] In addition, expenses for qualified long-term care services are treated as medical expenses for purposes of the itemized deduction.

Definition of long-term care insurance contract

A long-term care insurance contract is defined as any insurance contract that provides only coverage of qualified long-term care services and that meets other requirements. The other requirements are that (1) the contract is guaranteed renewable, (2) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged or borrowed, (3) refunds (other than refunds on the death of the insured or complete surrender or cancellation of the contract) and dividends under the contract may be used only to reduce future premiums or increase future benefits, and (4) the contract generally does not pay or reimburse expenses reimbursable under Medicare (except where Medicare is a secondary payor, or the contract makes per diem or other periodic payments without regard to expenses).

A contract does not fail to be treated as a long-term care insurance contract solely because it provides for payments on a per diem or other periodic basis without regard to expenses during the period.

Medicare duplication rules

The House bill provides that no provision of law shall be construed or applied so as to prohibit the offering of a long-term care insurance contract on the basis that the contract coordinates its benefits with those provided under Medicare. Thus, long-term care insurance contracts are not subject to the rules requiring duplication of Medicare benefits.

Definition of qualified long-term care services

Qualified long-term care services means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services that are required by a chronically ill individual and that are provided pur-

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[9] The House bill does not otherwise modify the requirements relating to FSAs. An FSA is defined (as under proposed regulations) as a benefit program providing employees with coverage under which specified incurred expenses may be reimbursed (subject to maximums and other reasonable conditions), and the maximum amount of reimbursement that is reasonably available to a participant is less than 500 percent of the value of the coverage.

[10] Similarly, within certain limits, in the case of a rider to a life insurance contract, charges against the life insurance contract's cash surrender value that are includible in income are treated as medical expenses (provided the rider constitutes a long-term care insurance contract).

suant to a plan of care prescribed by a licensed health care practitioner.

A chronically ill individual is one who has been certified within the previous 12 months by a licensed health care practitioner as being unable to perform (without substantial assistance) at least 2 activities of daily living for at least 90 days [11] due to a loss of functional capacity or cognitive impairment, or having a similar level of disability as determined by the Secretary of the Treasury in consultation with the Secretary of Health and Human Services. Activities of daily living are eating, toileting, transferring, bathing, dressing and continence.[12]

A licensed health care practitioner is a physician (as defined in sec. 1861(r)(l) of the Social Security Act) and any registered professional nurse, licensed social worker, or other individual who meets such requirements as may be prescribed by the Secretary of the Treasury.

Itemized deduction for medical expenses

Unreimbursed expenses for qualified long-term care services provided to the taxpayer or the taxpayer's spouse or dependent are treated as medical expenses for purposes of the itemized deduction for medical expenses (subject to the present-law floor of 7.5 percent of adjusted gross income). For this purpose, amounts received under a long-term care insurance contract (regardless of whether the contract reimburses expenses or pays benefits on a per diem or other basis) are treated as reimbursement for expenses actually incurred for medical care.

For purposes of the deduction for medical expenses, qualified long-term care services do not include services provided to an individual by a relative (directly, or through a partnership, corporation, or other entity), unless the relative is a licensed professional with respect to such services, or by a related corporation (within the meaning of Code section 267(b) or 707(b)).[13]

Long-term care insurance premiums that do not exceed specified dollar limits are treated as medical expenses for purposes of the itemized deduction for medical expenses. The limits are as follows:

In the case of an individual with an attained age before the close of the taxable year of:	*The limitation on premiums paid for such taxable years is:*
Not more than 40	$200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500

[11] The 90-day period is not a waiting period. Thus, an individual can be certified as chronically ill if the licensed health care practitioner certifies that the individual will be unable to perform at least 2 activities of daily living for at least 90 days.

[12] Nothing in the House bill requires the contract to take into account all of the activities of daily living. For example, a contract could require that an individual be unable to perform (without substantial assistance) 2 out of any 5 such activities, or for another example, 3 out of the 6 activities.

[13] The rule limiting such services provided by a relative or a related corporation does not apply for purposes of the exclusion for amounts received under a long-term care insurance contract, whether the contract is employer-provided or purchased by an individual. The limitation is unnecessary in such cases because it is anticipated that the insurer will monitor reimbursements to limit opportunities for fraud in connection with the performance of services by the taxpayer's relative or a related corporation.

For taxable years beginning after 1996, these dollar limits are indexed for increases in the medical care component of the consumer price index. The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, is directed to develop a more appropriate index to be applied in lieu of the foregoing. Such an alternative might appropriately be based on increases in skilled nursing facility and home health care costs. It is intended that the Treasury Secretary annually publish the indexed amount of the limits as early in the year as they can be calculated.

Long-term care riders on life insurance contracts

In the case of long-term care insurance coverage provided by a rider on a life insurance contract, the requirements applicable to long-term care insurance contracts apply as if the portion of the contract providing such coverage were a separate contract. The term "portion" means only the terms and benefits that are in addition to the terms and benefits under the life insurance contract without regard to long-term care coverage. The guideline premium limitation applicable under section 7702(c)(2) is increased by the sum of charges (but not premium payments) against the life insurance contract's cash surrender value, less any such charges, the imposition of which reduces premiums paid for the contract (within the meaning of sec. 7702(f)(1)). In addition, it is anticipated that Treasury regulations will provide for appropriate reduction in premiums paid (within the meaning of sec. 7702(f)(1)) to reflect the payment of benefits under the rider that reduce the cash surrender value of the life insurance contract. A similar rule should apply in the case of a contract governed by section 101(f) and in the case of the payments under a rider that are excludable under section 101(g) of the Code (as added by the House bill).

Life insurance company reserves

In determining reserves for insurance company tax purposes, the House bill provides that the Federal income tax reserve method applicable for a long-term care insurance contract issued after December 31, 1995, is the method prescribed by the National Association of Insurance Commissioners (or, if no reserve method has been so prescribed, a method consistent with the tax reserve method for life insurance, annuity or noncancellable accident and health insurance contracts, whichever is most appropriate). The method currently prescribed by the NAIC for long-term care insurance contracts is the one-year full preliminary term method. As under present law, however, in no event may the tax reserve for a contract as of any time exceed the amount which would be taken into account with respect to the contract as of such time in determining statutory reserves.

Health care continuation rules

The health care continuation rules do not apply to coverage under a long-term care insurance contract.

Exchanges of life insurance and other contracts for long-term care insurance contracts

The exchange of a life insurance contract or an endowment or annuity contract for a qualified long-term care insurance contract is not taxable under the House bill.

Certain distributions from IRAs and retirement plans for long-term care insurance excludable from income

The House bill excludes from gross income distributions from individual retirement arrangements (IRAs) and distributions attributable to elective deferrals to qualified cash or deferred arrangements (sec. 401(k) plans), tax-sheltered annuities (sec. 403(b) plans), nonqualified deferred compensation plans of governmental or tax-exempt employers (sec. 457 plans), and section 501(c)(18) plans used to pay premiums for long-term care insurance for the individual or the individual's spouse. Such distributions are also not subject to the 10-percent tax on early withdrawals. A plan will not fail to meet the Internal Revenue Code requirements applicable to such plan merely because it permits such distributions.

Inclusion of excess long-term care benefits

In general, the House bill provides that the maximum annual amount of long-term care benefits excludable from income with respect to an insured who is chronically ill (not including amounts received by reason of the individual being terminally ill)[14] cannot exceed the equivalent of $200 per day for each day the individual is chronically ill. Thus, the maximum annual exclusion for long-term care benefits with respect to any chronically ill individual (not including amounts received by reason of the individual being terminally ill) is $73,000 (for 1996). Long-term care benefits for this purpose include payments and other benefits received under a long-term care insurance contract (to the extent otherwise excludable under section 7702B(b) as added by the House bill) and payments that are otherwise excludable under the provision of the bill related to accelerated death benefits and viatical settlements with respect to persons who are chronically ill (sec. 101(g) (as added by the House bill)). If the insured is not the same as the holder of the contract, the insured may assign some or all of this limit to the contract holder at the time and manner prescribed by the Secretary.

This $200 per day limit is indexed for inflation after 1996 for increases in the medical care component of the consumer price index. The Treasury Secretary, in consultation with the Secretary of Health and Human Services, is directed to develop a more appropriate index, to be applied in lieu of the foregoing. Such an alternative might appropriately be based on increases in skilled nursing facility and home health care costs. It is intended that the Treasury Secretary annually publish the indexed amount of the limit as early in the year as it can be calculated.

A payor of long-term care benefits (as defined above) is required to report to the IRS the aggregate amount of such benefits

[14] Terminally ill is defined as under the provision of the bill relating to accelerated death benefits. In general, under that provision, an individual is considered to be terminally ill if he or she is certified as having an illness or physical condition that reasonably can be expected to result in death within 24 months of the date of the certification.

paid to any individual during any calendar year, and the name, address and taxpayer identification number of such individual. A copy of the report must be provided to the payee by January 31 following the year of payment, showing the name of the payor and the aggregate amount of benefits paid to the individual during the calendar year. Failure to file the report or provide the copy to the payee is subject to the generally applicable penalties for failure to file similar information reports.

Effective date

The provisions defining long-term care insurance contracts and qualified long-term care services apply to contracts issued after December 31, 1995. Any contract issued before January 1, 1996, that met the long-term care insurance requirements in the State in which the policy was issued at the time it was issued is treated as a long-term care insurance contract, and services provided under or reimbursed by the contract are treated as qualified long-term care services.

A contract providing for long-term care insurance may be exchanged for a long-term care insurance contract (or the former cancelled and the proceeds reinvested in the latter within 60 days) tax free between the date of enactment and January 1, 1996. Taxable gain would be recognized to the extent money or other property is received in the exchange.

The issuance or conformance of a rider to a life insurance contract providing long-term care insurance coverage is not treated as a modification or a material change for purposes of applying sections 101(f), 7702 and 7702A of the Code.

The provisions relating to (1) treatment as a medical expense of qualified long-term care insurance services and eligible long-term care premiums and (2) tax-free exchanges of life insurance, endowment and annuity contracts for long-term care insurance contracts, are effective for taxable years beginning after December 31, 1995.

The change in treatment of reserves for long-term care insurance contracts is effective for contracts issued after December 31, 1995. If, after that date, a company changes its tax reserve method for long-term care insurance contracts issued after that date, the amount of any adjustment arising from the change with respect to those contracts is spread over a 10-year period as provided in section 807(f).

The provision relating to certain distributions from IRAs and elective deferrals used to pay long-term care insurance premiums is effective for payments and distributions after December 31, 1995.

The provisions relating to the maximum exclusion for long-term care benefits and reporting are effective for taxable years beginning after December 31, 1995. Thus, the initial year in which reports will be filed with the IRS and copies provided to the payee will be 1997, with respect to long-term care benefits paid in 1996.

Senate amendment

Tax treatment and definition of long-term care insurance contracts and qualified long-term care services

In general

The Senate amendment is generally the same as the House bill, except as follows. The cap on excludable amounts applies only to per diem type contracts. If the aggregate payments under all per diem contracts with respect to any one insured exceed $150 per day, then the excess is not excludable. The $150 limit is indexed by the lesser of (1) 5 percent, or (2) increases in the consumer price index. After 1998, a cost index based on cost increases in nursing homes and similar facilities is to be substituted for the consumer price index.

As under the House bill, the deduction for a percentage of health insurance expenses of self-employed individuals applies to long-term care insurance premiums, except that the Senate amendment increases the deduction for health insurance expenses of self-employed individuals to 55 percent.

Definition of long-term care insurance contract

The Senate amendment is generally the same as the House bill, except that the other requirements that a long-term care insurance contract must meet are as follows: (1) premiums are level annual payments over the life of the contract (or 20 years, if shorter); (2) refunds (other than refunds on death of the insured or complete surrender or cancellation of the contract) and dividends under the contract may be used only to reduce future premiums or increase future benefits; (3) the contract prohibits borrowing, assignment, or pledging; and (4) the contract generally does not pay or reimburse expenses reimbursable under Medicare (except where Medicare is a secondary payor). In addition, the Senate amendment imposes consumer protection requirements set forth in the January 1993 National Association of Insurance Commissioners Long-Term Care Insurance Model Act and Regulations, including a requirement that the contract cannot be cancelled on the grounds of age or deterioration of mental or physical health of the insured.

Medicare duplication rules

The Senate amendment is the same as the House bill.

Definition of qualified long-term care services

Qualified long-term care services mean necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative and maintenance (including personal care) services, that are required by a functionally impaired individual. Such services are required to be provided pursuant to a plan of care prescribed by a licensed health care practitioner, and to have as their primary purpose the provision of needed assistance with one or more activities of daily living, or substantial supervision to protect from threats to health and safety due to substantial cognitive impairment.

A functionally impaired individual means one who has been certified within the previous 12 months by a licensed health care practitioner as (1) being unable to perform (without substantial assistance) at least two activities of daily living, or (2) requiring substantial supervision to protect such individual from threats to health and safety due to substantial cognitive impairment. Activities of daily living are eating, toileting, transferring, bathing, dressing and continence.

A licensed health care practitioner is defined as a physician (as defined in sec. 1861(r)(1) of the Social Security Act), registered professional nurse, qualified community care case manager, or other qualified individual who meets such requirements as may be prescribed by the Secretary of the Treasury, provided such person is not a relative of the individual receiving care. A qualified community care case manager means an individual or entity with experience in assessing individuals to determine functional and cognitive impairment, and with experience in providing case management services and preparing individual care plans, and that meets requirements prescribed by the Secretary of the Treasury in consultation with the Secretary of Health and Human Services.

Itemized deduction for medical expenses

Without regard to dollar limits and without a limitation on services provided by relatives or related corporations, the Senate amendment provides that unreimbursed expenses for qualified long-term care services provided to the taxpayer or the taxpayer's spouse or dependent are treated as medical expenses for purposes of the itemized deduction for medical expenses (subject to the present-law floor of 7.5 percent of adjusted gross income). Amounts received under a long-term care insurance contract (regardless of whether the contract reimburses expenses or pays benefits on a per diem or other basis) are treated as reimbursement for expenses for this purpose. A deduction is also provided for premiums for insurance covering otherwise deductible expenses for medical care that is provided under a long-term care insurance contract.

Long-term care riders on life insurance contracts

The Senate amendment is generally the same as the House bill, except that the Senate amendment adds to the definition of the term "portion" a proviso that the payment of benefits does not result in the benefits failing to be treated as long-term care insurance by reason of a reduction in the contract's death benefit or cash surrender value resulting from any such payment.

Life insurance company reserves

The Senate amendment is the same as the House bill.

Health care continuation rules

The Senate amendment is the same as the House bill.

Consumer protection provisions

Under the Senate amendment, long-term care insurance contracts, and issuers of contracts, are required to satisfy certain provisions of the long-term care insurance model Act and model regulations promulgated by the National Association of Insurance Commissioners (as adopted as of January 1993). The policy requirements relate to disclosure, nonforfeitability, guaranteed renewal or noncancelability, prohibitions on limitations and exclusions, extension of benefits, continuation or conversion of coverage, discontinuance and replacement of policies, unintentional lapse, post-claims underwriting, minimum standards, inflation protection, preexisting conditions, and prior hospitalization. The Senate amendment also provides disclosure and nonforfeiture requirements. The nonforfeiture provision gives consumers the option of selecting reduced paid-up insurance, extended term insurance, or a shortened benefit period in the event a policyholder who elects a nonforfeiture provision is unable to continue to pay premiums. The requirements for issuers of long-term care insurance contracts relate to application forms, reporting requirements, marketing, appropriateness of purchase, format, delivering a shopper's guide, right to return, outline of coverage, group plans, policy summary, monthly reports on accelerated death benefits, and incontestability period. A tax is imposed equal to $100 per policy per day for failure to satisfy these requirements.

Nothing in the proposal prevents a State from establishing, implementing or continuing standards related to the protection of policyholders of long-term care insurance policies, if such standards are not inconsistent with standards established under the proposal.

Effective date

The provisions relating to treatment of long-term care insurance or plans apply to contracts issued after December 31, 1995. The provisions relating to treatment of qualified long-term care services as medical care apply to taxable years beginning after December 31, 1995. The Senate amendment provides that no inference is intended as to the tax treatment of long-term care insurance and services prior to the effective date.

A contract providing for payment or reimbursement of services similar to qualified long-term care services, that is issued on or before December 31, 1995, may be exchanged for a long-term care insurance contract tax-free until June 30, 1997. Taxable gain is recognized to the extent money or other property is received in the exchange.

The issuance or conformance of a rider to a life insurance contract providing long-term care insurance coverage is not treated as a modification or a material change for purposes of applying present-law rules relating to flexible premium contracts and the definition of life insurance contracts and modified endowment contracts.

The change in treatment of reserves for long-term care insurance contracts is effective for contracts issued after December 31, 1995.

The provision relating to the reporting of long-term care benefits is effective for benefits paid after December 31, 1995. Thus, the initial year in which reports will be filed with the IRS and copies provided to the payee will be 1997, with respect to long-term care benefits paid in 1996.

The provision relating to consumer protections applies to contracts issued after December 31, 1995 with respect to policy requirements, and to actions taken after December 31, 1995 with respect to actions by insurers.

Conference agreement

The conference agreement follows the House bill, with modifications.

Under the conference agreement, the dollar cap on excludable amounts is $175 per day. In addition, the dollar cap on excludable amounts applies only to per diem type contracts. If the aggregate payments under all per diem contracts with respect to any one insured exceed $175 per day, then the excess is not excludable.

The conference agreement includes the consumer protection provisions of the Senate amendment. Thus, as under the Senate amendment, long-term care insurance contracts, and issuers of contracts, are required to satisfy certain provisions of the long-term care insurance model Act and model regulations promulgated by the National Association of Insurance Commissioners (as adopted as of January 1993).

Under the conference agreement, the 10-percent tax on early withdrawals does not apply to distributions from individual retirement arrangements (IRAs) and distributions attributable to elective deferrals to qualified cash or deferred arrangements (sec. 401(k) plans), tax-sheltered annuities (sec. 403(b) plans), nonqualified deferred compensation plans of governmental or tax-exempt employers (sec. 457 plans), and section 501(c)(18) plans used to pay premiums for long-term care insurance for the individual or the individual's spouse. Unlike the House bill, however, the conference agreement provides that such distributions are includable in income (as under present law). A plan will not fail to meet the Internal Revenue Code requirements applicable to such plan merely because it permits such distributions.

Under the conference agreement, a contract providing for long-term care insurance may be exchanged for a long-term care insurance contract (or the former may be cancelled and the proceeds reinvested in the latter within 60 days) tax free between the date of enactment and January 1, 1997.

B. TREATMENT OF ACCELERATED DEATH BENEFITS UNDER LIFE INSURANCE CONTRACTS (SECS. 6221–6222 OF H.R. 1215 AND SECS. 12221–12222 OF THE SENATE AMENDMENT)

Present law

Treatment of amounts received under a life insurance contract

If a contract meets the definition of a life insurance contract, gross income does not include insurance proceeds that are paid pursuant to the contract by reason of the death of the insured (sec. 101(a)). In addition, the undistributed investment income ("inside buildup") earned on premiums credited under the contract is not subject to current taxation to the owner of the contract. The exclusion under section 101 applies regardless of whether the death benefits are paid as a lump sum or otherwise.

Amounts received under a life insurance contract (other than a modified endowment contract) prior to the death of the insured are includible in the gross income of the recipient to the extent that the amount received constitutes cash value in excess of the taxpayer's investment in the contract (generally, the investment in the contract is the aggregate amount of premiums paid less amounts previously received that were excluded from gross income).

If a contract fails to be treated as a life insurance contract under section 7702(a), inside buildup on the contract is generally subject to tax (sec. 7702(g)).

Requirements for a life insurance contract

To qualify as a life insurance contract for Federal income tax purposes, a contract must be a life insurance contract under the applicable State or foreign law and must satisfy either of two alternative tests: (1) a cash value accumulation test or (2) a test consisting of a guideline premium requirement and a cash value corridor requirement (sec. 7702(a)). A contract satisfies the cash value accumulation test if the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at such time to fund future benefits under the contract. A contract satisfies the guideline premium and cash value corridor tests if the premiums paid under the contract do not at any time exceed the greater of the guideline single premium or the sum of the guideline level premiums, and if the death benefit under the contract is not less than a varying statutory percentage of the cash surrender value of the contract.

Proposed regulations on accelerated death benefits

The Treasury Department has issued proposed regulations [15] under which certain "qualified accelerated death benefits" paid by reason of the terminal illness of an insured would be treated as paid by reason of the death of the insured, and therefore would qualify for exclusion under section 101. For purposes of the proposed regulations, an insured would be treated as terminally ill if he or she has an illness that, despite appropriate medical care, the insurer reasonably expects to result in death within 12 months from the payment of the accelerated death benefit. The proposed regulations would not apply to viatical settlements.

House bill

The House bill provides an exclusion from gross income as an amount paid by reason of the death of an insured for (1) amounts received under a life insurance contract and (2) amounts received for the sale or assignment of a life insurance contract to a qualified viatical settlement provider, provided that the insured under the life insurance contract is either terminally ill or chronically ill.[16]

The provision does not apply in the case of an amount paid to any taxpayer other than the insured, if such taxpayer has an insurable interest by reason of the insured being a director, officer or employee of the taxpayer, or by reason of the insured being finan-

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[15] Prop. Treas. Reg. Secs. 1.101–8, 1.7702–0, 1.7702–2, and 1.7702A–1 (December 15, 1992).

[16] The exclusion for amounts received under a life insurance contract on the life of an insured who is chronically ill applies if the amount is received under a rider or other provision of the contract that is treated as a long-term care insurance contract under section 7702B (as added by the House bill).

cially interested in any trade or business carried on by the taxpayer.

A terminally ill individual is defined as one who has been certified by a physician as having an illness or physical condition that reasonably can be expected to result in death within 24 months of the date of certification.

A chronically ill individual is defined as under the long-term care provisions of the House bill.[17] In the case of amounts received with respect to a chronically ill individual (but not amounts received by reason of the individual being terminally ill), the $200 per day ($73,000 annual) limitation on excludable benefits (also applicable to long-term care insurance benefits) applies. A reporting requirement applies to payments to a chronically ill individual.

A qualified viatical settlement provider is any person that regularly purchases or takes assignments of life insurance contracts on the lives of terminally ill or chronically ill individuals and either (1) is licensed for such purposes in the State in which the insured resides, or (2) if the person is not required to be licensed by that State, meets the requirements of sections 8 and 9 of the Viatical Settlements Model Act issued by the National Association of Insurance Commissioners (relating to disclosure requirements and general rules for a viatical settlement contract).

For life insurance company tax purposes, the House bill provides that a life insurance contract is treated as including a reference to a qualified accelerated death benefit rider to a life insurance contract (except in the case of any rider that is treated as a long-term care insurance contract under section 7702B, as added by the bill). A qualified accelerated death benefit rider is any rider on a life insurance contract that provides only for payments of a type that are excludable under this provision.

Effective date.—The provision applies to amounts received after December 31, 1995. The provision treating a qualified accelerated death benefit rider as life insurance for life insurance company tax purposes takes effect on January 1, 1996. The issuance of a qualified accelerated death benefit rider to a life insurance contract, or the addition of any provision required to conform an accelerated death benefit rider to these provisions, is not treated as a modification or material change of the contract (and is not intended to affect the issue date of any contract under section 101(f)).

Senate amendment

In general

The Senate amendment is the same as the House bill, except as follows.

A terminally ill individual is defined as one who has been certified by a physician as having an illness or physical condition that reasonably is expected to result in death within 12 months of the

[17] Thus, a chronically ill individual is one who has been certified within the previous 12 months by a licensed health care practitioner as being unable to perform (without substantial assistance) at least 2 activities of daily living for at least 90 days due to a loss of functional capacity or cognitive impairment, or having a similar level of disability as determined by the Secretary of the Treasury in consultation with the Secretary of Health and Human Services. Activities of daily living are eating, toileting, transferring, bathing, dressing and continence. Nothing in the bill requires the contract to take into account all of the activities of daily living.

date of certification. The Senate amendment does not apply in the case of a chronically ill individual.

Amounts received under a life insurance contract

The exclusion for amounts received under a life insurance contract is available only if two requirements are met. First, under a present value test, the amount received must equal or exceed the present value of the reduction in the death benefit otherwise payable under the life insurance contract. Second, under a ratio test, the payment of the amount must not reduce the cash surrender value of the contract proportionately more than the death benefit payable under the contract. In other words, the percentage derived by dividing the cash surrender value of the contract immediately after the distribution by the cash surrender value of the contract immediately before the distribution must equal or exceed the percentage derived by dividing the death benefit payable immediately after the distribution by the death benefit payable immediately before the distribution. The amount received includes a series of payments.

For purposes of the present value test, the present value of the reduction in the death benefit is determined by reference to a maximum permissible discount rate, and by assuming that the death benefit would have been paid on the date that is 12 months from the date of the physician's certification. The maximum permissible discount rate is the highest of the following three interest rates: (1) the 90-day Treasury bill yield (as most recently published); (2) Moody's Corporate Bond Yield Average-Monthly Average Corporates (or any successor rate) for the month ending two months before the date the rate is determined; or (3) the rate used to determine cash surrender values under the contract during the applicable period plus 1 percent per annum. It is intended that the rate be determined as of the date (or dates) that the payment is made.

If the accelerated death benefit under the contract is paid in connection with a lien against the death benefit rather than an actual reduction in the death benefit on a discounted basis, then the amount of the lien, and interest charges with respect to any amount in connection with the lien, are taken into account so as to achieve parity between use of the lien method and use of a discounted payment.

Viatical settlements

The Senate amendment defines a viatical settlement provider the same as under the House bill, except that if the viatical settlement provider is not required to be licensed by the State in which the insured resides, then the requirements of the section of the Viatical Settlements Model Regulation issued by the NAIC relating to standards for evaluation of reasonable payments, including discount rates, must be met in determining amounts paid by the viatical settlement provider.

Effective date

The Senate amendment applies to amounts received after December 31, 1995. The discount rules applicable to payments under life insurance contracts do not apply to any amount received before July 1, 1996. The provision treating a qualified accelerated death benefit rider as life insurance for life insurance company tax purposes takes effect on January 1, 1996. The issuance of a qualified accelerated death benefit rider to a life insurance contract, or the addition of any provision required to conform an accelerated death benefit rider to these provisions, would not be treated as a modification or material change of the contract for purposes of the definition of a life insurance contract and a modified endowment contract (and would not affect the issue date of any contract under section 101(f)).

Conference agreement

The conference agreement follows the House bill, with modifications.

As under the House bill, in the case of amounts received with respect to a chronically ill individual (but not amounts received by reason of the individual being terminally ill), the dollar cap of $175 per day [18] on excludable benefits (applicable to long-term care insurance benefits) applies. The reporting requirement under the House bill also applies.

Under the conference agreement, the Treasury Department is required to provide a definition of a chronically ill individual for purposes of the accelerated death benefit provision. It is intended that this definition include individuals with Parkinson's disease, Alzheimer's disease or symptomatic AIDS as chronically ill individuals.

The conference agreement, like the Senate amendment, defines a viatical settlement provider the same as under the House bill, except that if the viatical settlement provider is not required to be licensed by the State in which the insured resides, then the requirements of the section of the Viatical Settlements Model Regulation issued by the NAIC relating to standards for evaluation of reasonable payments, including discount rates, must be met in determining amounts paid by the viatical settlement provider.

C. MEDICAL SAVINGS ACCOUNTS (SEC. 13201 OF THE HOUSE BILL AND SECS. 12231–12233 OF THE SENATE AMENDMENT)

Present law

The tax treatment of health expenses depends on whether the individual is an employee or self employed, and whether the individual is covered under an employer-sponsored health plan. Employer contributions to a health plan for coverage for the employee and the employee's spouse and dependents is excludable from the employee's income and wages for social security tax purposes. Self-employed individuals are entitled to deduct 30 percent of the amount paid for health insurance for the self-employed individual and his or her spouse or dependents. The 30-percent deduction is

[18] The conference agreement follows the House bill, with modifications, with respect to long-term care insurance and services. The conference agreement provides that the dollar cap on excludable benefits under a long-term care insurance contract is modified to $175 per day, and applies only to per diem policies, not to indemnity policies. The dollar cap of $175 per day also applies to amounts excludable under this provision that are paid with respect to a chronically ill individual.

available with respect to self insurance, as well as commercial insurance. Of course, the self-insured plan must in fact be insurance (e.g., there must be appropriate risk shifting) and not merely a reimbursement arrangement. Individuals who itemize their tax deductions may deduct unreimbursed medical expenses (including expenses for medical insurance) paid during the year to the extent that the total of such expenses exceeds 7.5 percent of the individual's adjusted gross income ("AGI"). Present law does not contain any special rules for medical savings accounts.

House bill

In general

Within limits, contributions to a medical savings account ("MSA") are deductible if made by an eligible individual and are excludable from income (and wages for social security purposes) if made by the employer of an eligible individual. Earnings on amounts in an MSA are currently taxable. Distributions from an MSA for medical expenses are not taxable.

Eligible individuals

An individual (including a self-employed individual) is eligible to make a deductible contribution to an MSA (or to have employer contributions made on his or her behalf) if the individual is covered under a catastrophic health plan and is not covered under another health plan (other than a plan that provides certain permitted coverage). An individual with other coverage in addition to a catastrophic plan is still eligible for an MSA if such other coverage is certain permitted insurance or is coverage (whether provided through insurance or otherwise) for accidents, dental care, vision care, or long-term care. Permitted insurance is (1) Medicare supplemental insurance; (2) insurance if substantially all of the coverage provided under such insurance relates to (a) liabilities incurred under worker's compensation law, (b) tort liabilities, (c) liabilities relating to ownership or use of property (e.g., auto insurance), (d) credit insurance, or (e) such other similar liabilities as the Secretary may prescribe by regulations, and (3) insurance for a specified disease or illness, and (4) insurance that provides a fixed payment for hospitalization. An individual is not eligible to make deductible contributions to an MSA for a year if any employer contributions are made to an MSA on behalf of the individual for the year.

Tax treatment of and limits on contributions

Individual contributions to an MSA are deductible (within limits) in determining AGI. Subject to the same limits, employer contributions to an MSA are excludable from gross income and wages for employment tax purposes, except that this exclusion does not apply to contributions made through a cafeteria plan. The maximum amount of contributions that can be deducted or excluded for a year is equal to the lesser of (1) the deductible under the catastrophic health plan or (2) $2,500 in the case of single coverage and $5,000 if the catastrophic plan covers the individual and a spouse or dependent. The annual limit is the sum of the limits determined separately for each month, based on the individual's status as of the first day of the month. The maximum contribution limit to an MSA is determined separately for each spouse in a married couple. In no event can the maximum contribution limit exceed $5,000 for a family. The dollar limits are indexed for medical inflation and rounded to the nearest multiple of $50.

Definition of catastrophic health plan

A catastrophic health plan is a health plan with a deductible of at least $1,500 in the case of single coverage and $3,000 in the case of coverage of more than one individual. These dollar limits are indexed for medical inflation, rounded to the nearest multiple of $50.

Tax treatment of MSAs

Earnings on amounts in an MSA are currently includible in income under the rules relating to grantor trusts. Any net capital losses cannot offset other income.

Taxation of distributions

Distributions from an MSA for the medical expenses of the individual and his or her spouse or dependents are excludable from income. For this purpose, medical expenses do not include expenses for insurance other than long-term care insurance. Distributions that are not for medical expenses are includible in income (to the extent attributable to tax-favored contributions) and are subject to an additional 10-percent tax unless made after age 59½, death or disability.

Upon death, if the beneficiary is the individual's spouse, the spouse may keep the MSA as his or her own. Otherwise, amounts in the MSA must be distributed within 5 years, and are includible in income (to the extent attributable to tax-favored contributions).

Definition of MSAs

In general, an MSA is a trust or custodial account created exclusively for the benefit of the account holder and is subject to rules similar to those applicable to individual retirement arrangements. An MSA trustee (or custodian) can be a bank, insurance company, or other person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with applicable requirements. The MSA trustee (or custodian) is required to make such reports as may be required by the Secretary.

Effective date

Taxable years beginning after December 31, 1995.

Senate amendment

In general

Generally the same as the House bill, except that earnings on amounts in an MSA are not currently taxable (i.e., "inside buildup" is tax free) and the amount of contributions that receive favorable tax treatment differs.

Eligible individuals

An individual is eligible to make deductible contributions to an MSA if the individual is covered under a high deductible health plan and is not eligible to participate in an employer-subsidized health plan maintained by the employer of the individual or his or her spouse or to receive any employer contribution to an MSA. An employer contribution to an MSA is excludable from gross income (and wages for employment tax purposes) if made on behalf of an individual in a high deductible health plan. An individual is eligible to receive employer contributions to an MSA if the individual is covered under a high deductible health plan.

Tax treatment of and limits on contributions

The tax treatment of MSA contributions follows the present-law tax treatment of health insurance expenses (as modified by the Senate amendment). Thus, a self-employed individual may deduct 55 percent of MSA contributions. Other individuals may deduct MSA contributions to the extent the contributions and other medical expenses exceed 7.5 percent of AGI. Employer contributions to an MSA are excludable from income and wages for employment tax purposes, except that this exclusion does not apply to employer contributions made through a cafeteria plan. Only one MSA per family is permitted. The maximum amount of contributions that can be made to an MSA is the lesser of (1) the deductible under the high deductible plan or (2) $2,000 in the case of single coverage and $4,000 if the high deductible plan covers the individual and a spouse or dependent. The annual limit is the sum of the limits determined separately for each month, based on the individual's status as of the first day of the month. The dollar limits are indexed for medical inflation and rounded to the next lowest multiple of $50.

Definition of high deductible health plan

Same as the House bill definition of catastrophic health plan, except that indexed amounts are rounded to the next lowest multiple of $50.

Tax treatment of MSAs

MSAs are exempt from tax. An MSA ceases to be an MSA if, within 2 years after the MSA is established the individual is no longer covered under a high deductible health plan other than by reason of separation from employment.

Taxation of distributions

Same as the House bill, except that medical expenses also include premiums for health care continuation coverage and premiums for health care coverage while an individual is receiving unemployment compensation under Federal or State law. Distributions that are not for medical expenses are includible in income (to the extent not attributable to nondeductible contributions) and are subject to an additional 10-percent tax unless made after age 59½, death, or disability. Upon death, if the beneficiary is the individual's surviving spouse, the spouse may continue the MSA as his or her own. Otherwise, the beneficiary must include the MSA balance (to the extent not attributable to nondeductible contributions) in income in the year of death. If there is no beneficiary, the MSA balance (to the extent not attributable to nondeductible contributions) is includible on the final return of the decedent. In any case, no estate tax applies.

Definition of MSAs

Same as the House bill, except that the Senate amendment provides that the acquisition expenses of an insurance company relating to the establishment of an MSA are not subject to the rules relating to the capitalization of policy acquisition costs.

Effective date

Same as the House bill.

Conference agreement

In general

The conference agreement generally follows the House bill, except that the conference agreement follows the Senate amendment with respect to the limits on maximum contributions ($2,000 per year for an individual and $4,000 per year if the high deductible plan also covers a spouse or dependent of the individual), tax treatment of earnings, definition of medical expenses that can be paid tax-free with MSA funds, post-death distributions, and clarification relating to capitalization of policy acquisition costs. In addition, the conference agreement adopts the term "high deductible plan" rather than "catastrophic plan."

Thus, under the conference agreement, within limits, contributions to an MSA are deductible if made by an eligible individual (including a self-employed individual) and are excludable from income (and wages for employment tax purposes) if made by the employer of an eligible individual. Earnings on amounts in an MSA are not currently taxable. Distributions from an MSA for medical expenses (as defined under the Senate amendment) are not taxable. Distributions from an MSA that are not for medical expenses are includible in income and subject to a 10-percent excise tax unless the distribution is made after age 59½, death, or disability.

Eligible individuals

The conference agreement follows the House bill. As under the House bill, an individual must be covered by a high deductible plan and no other health plan in order to be eligible for an MSA. However, an individual may have certain types of permitted coverage and insurance in addition to the high deductible plan (e.g., dental coverage) and still qualify for an MSA. The conference agreement modifies the House bill definition of permitted coverage to provide that disability coverage (whether provided through insurance or otherwise) is permitted coverage and that credit insurance is not permitted coverage.

Tax treatment of and limits on contributions

The conference agreement follows the House bill, except that the maximum contribution is determined as under the Senate amendment. Under the conference agreement, individual contributions to an MSA are deductible (within limits) in determining AGI. Subject to the same limits, employer contributions to an MSA are excludable from gross income, except that this exclusion does not apply to contributions made through a cafeteria plan. It is expected that the present-law exclusion for social security purposes for accident and sickness benefits applies to employer contributions to an MSA that are excludable from income. If the high deductible plan covers only the individual, the maximum amount of contributions that can be deducted or excluded for a year is equal to the lesser of (1) the deductible under the high deductible plan or (2) $2,000. If the high deductible plan covers the individual and a spouse or a dependent, the maximum that can be excluded or deducted for a year is the lesser of (1) the annual limit under the plan on the aggregate amount of deductibles required to be paid with respect to all individuals, and (2) $4,000. The annual limit is the sum of the limits determined separately for each month, based on the individual's status as of the first day of the month. The maximum contribution limit to an MSA is determined separately for each spouse in a married couple. In no event can the maximum contribution limit exceed $4,000 for a family. The dollar limits are indexed for medical inflation and rounded to the nearest multiple of $50.

Definition of high deductible plan

The conference agreement follows the House bill and the Senate amendments. The conference agreement also clarifies that permitted coverage or insurance does not qualify as a high deductible plan. The conferees intend that a plan will not fail to be considered a high deductible plan merely because, under State law, the plan is required to provide that there is no deductible for preventive care.

Tax treatment of MSAs

The conference agreement follows the Senate amendment with respect to taxation of MSA earnings. Thus, under the conference agreement, MSAs are tax exempt. The conference agreement does not contain the provision in the Senate amendment providing that an MSA ceases to be an MSA if, within 2 years after the MSA is established, the individual is no longer covered under a high deductible plan.

Taxation of distributions

Under the conference agreement, distributions from an MSA for the unreimbursed medical expenses of the individual (including a self-employed individual) and his or her spouse or dependents are excludable from income. The exclusion applies regardless of whether the payment is made directly from the MSA to the service provider, the MSA distribution reimburses the individual for expenses already incurred, or the individual uses the MSA distribution to pay the service provider. In addition, trustee-to-trustee transfers from one MSA to another are permitted.

Medical expenses are defined as under the Senate amendment. Thus, medical expenses are defined as under the rules relating to the itemized deduction for medical expenses, except that medical expenses do not include insurance premiums other than (1) premiums for long-term care insurance as defined under the conference agreement; (2) premiums for health care continuation coverage under any Federal law; and (3) premiums while the individual is receiving unemployment compensation.

Distributions that are not for medical expenses are includible in income and are subject to an additional 10-percent tax unless made after age 59½, death, or disability.

The conference agreement follows the Senate amendment with respect to distributions after the death of the individual.

Definition of MSAs

The conference agreement follows the Senate amendment.

Effective date

The provision is effective for taxable years beginning after December 31, 1995.

D. DEDUCTION FOR HEALTH INSURANCE EXPENSES OF SELF-EMPLOYED INDIVIDUALS (SEC. 12241 OF THE SENATE AMENDMENT)

Present law

Under present law, self-employed individuals are entitled to deduct 30 percent of the amount paid for health insurance for a self-employed individual and the individual's spouse and dependents. The deduction is not available for any month if the taxpayer was eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse. The 30-percent deduction is available in the case of self insurance as well as commercial insurance. Of course, the self-insured plan must in fact be insurance (e.g., there must be appropriate risk shifting) and not merely a reimbursement arrangement.

House bill

No provision.

Senate amendment

Under the Senate amendment, the deduction for health insurance expenses of self-employed individuals and their spouses and dependents is increased to 55 percent.

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment, with modifications. Under the conference agreement, the deduction for health insurance for self-employed individuals is phased up to 50 percent as follows: for taxable years beginning in 1998 and 1999, the amount of the deduction is 35 percent of health insurance expenses; for taxable years beginning in 2000 and 2001, 40 percent; and for taxable years beginning in 2002 and thereafter, 50 percent.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

E. INCREASE DOLLAR LIMITS FOR BURIAL INSURANCE (SEC. 12242 OF THE SENATE AMENDMENT)

Present law

To qualify as a life insurance contract for Federal income tax purposes, a contract must be a life insurance contract under the applicable State or foreign law and must satisfy either of two alternative tests: (1) a cash value accumulation test or (2) a test consisting of a guideline premium requirement and a cash value corridor requirement (sec. 7702). A contract satisfies the cash value accumulation test if the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at such time to fund future benefits under the contract. A contract satisfies the guideline premium and cash value corridor tests if the premiums paid under the contract do not at any time exceed the greater of the guideline single premium or the sum of the guideline level premiums, and if the death benefit under the contract is not less than a varying statutory percentage of the cash surrender value of the contract. Under these rules, the death benefit is generally deemed not to increase (sec. 7702(e)(1)(A)).

Special rules apply with respect to a contract that is purchased to cover payment of burial expenses or in connection with prearranged funeral expenses. For such a contract, death benefit increases may be taken into account in applying the cash value accumulation test if the contract (1) has an initial death benefit of $5,000 or less and a maximum death benefit of $25,000 or less, and (2) provides for a fixed predetermined annual increase not to exceed 10 percent of the initial death benefit or 8 percent of the death benefit at the end of the preceding year (sec. 7702(e)(2)(C)).

House bill

No provision.

Senate amendment

The Senate amendment increases the dollar limits applicable in the case of an insurance contract to cover payment of burial expenses or in connection with prearranged funeral expenses. For such a contract, death benefit increases may be taken into account in applying the cash value accumulation test if the contract has an initial death benefit of $7,000 or less and a maximum death benefit of $30,000 or less (and other requirements of present law are met). In addition, these dollar limits are to be adjusted annually, after 1995, for inflation in accordance with the consumer price index.

Effective date.—The provision is effective for contracts entered into after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment.

F. HEALTH INSURANCE ORGANIZATIONS ELIGIBLE FOR BENEFITS OF SECTION 833 (SEC. 12243 OF THE SENATE AMENDMENT)

Present law

An organization described in section 501(c)(3) or (4) of the Code is exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance (sec. 501(m)). Special rules apply to certain eligible health insurance organizations. Eligible health insurance organizations are (1) Blue Cross or Blue Shield organizations existing on August 16, 1986, which have not experienced a material change in structure or operations since that date, and (2) other organizations that meet certain community-service-related requirements and substantially all of whose activities involve the providing of health insurance (sec. 833). Section 833 provides that eligible organizations are generally treated as stock property and casualty insurance companies.

Section 833 provides a special deduction for eligible organizations, equal to 25 percent of the claims and expenses incurred during the year, less the adjusted surplus at the beginning of the year. This deduction is calculated by computing surplus, taxable income, claims incurred, expenses incurred, tax-exempt income, net operating loss carryovers, and other items attributable to health business. The deduction may not exceed taxable income attributable to health business for the year (calculated without regard to this deduction).

In addition, section 833 eliminates, for eligible organizations, the 20-percent reduction in unearned premium reserves that applies generally to all property and casualty insurance companies.

House bill

No provision.

Senate amendment

The Senate amendment applies the special rules under section 833 to the same extent they are provided to certain existing Blue Cross or Blue Shield organizations, in the case of any organization that (1) is not a Blue Cross or Blue Shield organization existing on August 16, 1986, and (2) otherwise meets the requirements of section 833(c)(2) (including the requirement of no material change in operations or structure since August 16, 1986). Under the Senate amendment, an organization qualifies for this treatment only if (1) it is not a health maintenance organization, and (2) it is organized under and governed by State laws which are specifically and exclusively applicable to not-for-profit health insurance or health service type organizations.

Effective date.—The provision is effective for taxable years ending after October 13, 1995.

Conference agreement

The conference agreement follows the Senate amendment.

IV. ESTATE AND GIFT TAX PROVISIONS

A. INCREASE IN UNIFIED ESTATE AND GIFT TAX CREDIT; INDEXING OF CERTAIN PROVISIONS

1. INCREASE IN UNIFIED CREDIT (SEC. 6351(A) OF H.R. 1215 AND SEC. 12302 OF THE SENATE AMENDMENT)

Present law

A unified credit of $192,800 is allowed in computing a taxpayer's estate and gift tax, which effectively exempts a total of $600,000 in cumulative taxable transfers from the estate and gift tax (sec. 2010).

House bill

The House bill increases the unified credit over a three-year period beginning in 1996, from an effective exemption of $600,000 to an effective exemption of $750,000. For decedents dying and gifts made in 1996, an effective exemption of $700,000 is provided; for decedents dying and gifts made in 1997, the effective exemption is $725,000; and for decedents dying and gifts made in 1998, the effective exemption is $750,000. After 1998, the effective exemption amount of $750,000 is indexed annually for inflation occurring after 1997. The indexed exemption amount is rounded to the nearest $10,000.

To reflect the increase in the unified credit, the House bill also makes conforming amendments to (1) the 5-percent surtax in order to permit the proper phase out of the increased unified credit, (2) the general filing requirements for estate and gift tax returns under Code section 6018(a), and (3) the amount of the unified credit allowed under Code section 2102(c)(3) with respect to nonresident aliens with U.S. situs property who are residents of certain treaty countries.

Effective date.—Effective for decedents dying and gifts made after December 31, 1995.

Senate amendment

The Senate amendment increases the present-law unified credit over a six-year period beginning in 1996, from an effective exemption of $600,000 to an effective exemption of $750,000. The increase is phased in as follows:

Decedents dying and gifts made in	*Effective exemption*
1996	$625,000
1997	650,000
1998	675,000
1999	700,000
2000	725,000
2001 and thereafter	750,000

The Senate amendment makes the same conforming amendments as are made in the House bill.

Effective date.—Same as the House bill.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that after 2001, the effective exemption amount of

$750,000 is increased by inflation occurring after 2000. The indexed exemption amount is rounded to the nearest $10,000.

2. INDEXING OF OTHER PROVISIONS (SEC. 6351(B)–(E) OF H.R. 1215)

Present law

Annual exclusion for gifts.—A taxpayer may exclude $10,000 of gifts of present interests in property made to each donee during a calendar year (sec. 2503).

Special use valuation.—An executor may elect for estate tax purposes to value certain qualified real property used in farming or a closely-held trade or business at its current use value, rather than its highest and best use value (sec. 2032A). The maximum reduction in value under such an election is $750,000.

Generation-skipping transfer tax.—An individual is allowed an exemption from the GST tax of up to $1,000,000 for generation-skipping transfers made during life or at death (sec. 2631).

Installment payment of estate tax.—An executor may elect to pay the Federal estate tax attributable to an interest in a closely held business in installments over, at most, a 14-year period (sec. 6166). The first $1,000,000 in value of a closely-held business is eligible for a special 4-percent interest rate (sec. 6601(j)).

House bill

The House bill provides that, after 1998, the $10,000 annual exclusion for gifts, the $750,000 ceiling on special use valuation, the $1,000,000 generation-skipping transfer tax exemption, and the $1,000,000 ceiling on the value of a closely-held business eligible for the special 4-percent interest rate, are all indexed annually for inflation occurring after 1987. Indexing of the annual exclusion is rounded to the nearest $1,000 and indexing of the other amounts is rounded to the nearest $10,000.

Effective date.—Effective for decedents dying, and gifts made, after December 31, 1998.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except that indexing does not begin until after December 31, 2000 (for inflation occurring after 1999).

Effective date.—Effective for decedents dying and gifts made after December 31, 2000.

B. REDUCTION IN ESTATE TAX FOR QUALIFIED FAMILY-OWNED BUSINESSES (SEC. 12301 OF THE SENATE AMENDMENT)

Present law

There are no special estate tax rules for qualified family-owned businesses. However, under section 2032A, an executor may elect for estate tax purposes to value certain qualified real property used in farming or another qualifying closely-held trade or business at its current use value, rather than its highest and best use value (up to a maximum reduction of $750,000). In addition, an executor may elect to pay the Federal estate tax attributable to a qualified closely-held business in installments over, at most, a 14-year period (sec. 6166). The first $1,000,000 in value of a closely-held business is eligible for a special 4-percent interest rate (sec. 6601(j)).

House bill

No provision.

Senate amendment

The Senate amendment provides special estate tax treatment for qualified "family-owned business interests" if such interests comprise more than 50 percent of a decedent's estate. Subject to certain requirements, the bill excludes the first $1.5 million of value in qualified family-owned business interests from the decedent's estate, and also excludes from the estate 50 percent of the value of qualified family-owned business interests between $1.5 million and $5 million. Thus, the total amount of exclusion available per decedent for qualified family-owned business interests is equal to $3.25 million (i.e., $1.5 million plus 50 percent of $3.5 million).

A qualified family-owned business interest is defined as any interest in a trade or business (regardless of the form in which it is held) with a principal place of business in the United States if ownership of the trade or business is held at least 50 percent by one family, 70 percent by two families, or 90 percent by three families, as long as the decedent's family owns at least 30 percent of the trade or business.

An interest in a trade or business does not qualify if the business' (or a related entity's) stock or securities were publicly-traded at any time within three years of the decedent's death. An interest in a trade or business also does not qualify if more than 35 percent of the adjusted ordinary gross income of the business for the year of the decedent's death was personal holding company income (as defined in section 543). In the case of a trade or business that owns an interest in another trade or business (i.e., "tiered entities"), special look-through rules apply.

The value of a trade or business qualifying as a family-owned business interest is reduced to the extent the business holds passive assets or excess cash or marketable securities.

To qualify for the beneficial treatment provided under the bill, the decedent (or a member of the decedent's family) must have owned and materially participated in the trade or business for at least five of the eight years preceding the decedent's date of death. In addition, each qualified heir (or a member of the qualified heir's family) is required to materially participate in the trade or business for at least five years of each 8-year period ending within ten years following the decedent's death.

The benefit of the exclusions for qualified family-owned business interests are subject to recapture if, within 10 years of the decedent's death and before the qualified heir's death, one of the following "recapture events" occurs: (1) the qualified heir ceases to meet the material participation requirements; (2) the qualified heir disposes of any portion of his or her interest in the family-owned business, other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution; (3) the principal place of business of the trade or business ceases to be located in the United States; or (4) the qualified heir loses U.S. citizenship.

The portion of the reduction in estate taxes that is recaptured is dependent upon the number of years that the qualified heir (or members of the qualified heir's family) materially participated in the trade or business after the decedent's death. If the qualified heir (or his or her family members) materially participated in the trade or business after the decedent's death for less than six years, 100 percent of the reduction in estate taxes attributable to that heir's interest is recaptured; if the participation was for at least six years but less than seven years, 80 percent of the reduction in estate taxes is recaptured; if the participation was for at least seven years but less than eight years, 60 percent is recaptured; if the participation was for at least eight years but less than nine years, 40 percent is recaptured; and if the participation was for at least nine years but less than ten years, 20 percent of the reduction in estates taxes is recaptured. In general, there is no requirement that the qualified heir (or members of his or her family) continue to hold or participate in the trade or business more than 10 years after the decedent's death. As under present-law section 2032A, however, the 10-year recapture period may be extended for a period of up to two years if the qualified heir does not begin to use the property for a period of up to two years after the decedent's death.

Effective date.—Effective with respect to the estates of decedents dying after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment, with the following modifications. The conference agreement excludes the first $1.0 million of value in qualified family-owned business interests from the decedent's estate, and also excludes from the estate 50 percent of the value of qualified family-owned business interests between $1.0 million and $2.5 million. Thus, the total amount of exclusion available per decedent for qualified family-owned business interests is equal to $1.75 million (i.e., $1.0 million plus 50 percent of $1.5 million).

In addition, the conference agreement coordinates the benefit for qualified family-owned business interests with the present-law benefits relating to special-use valuation (sec. 2032A) and the special 4-percent interest rate available for closely-held businesses (sec. 6601(j)). The conference agreement provides that any amount excluded from a decedent's estate under the qualified family-owned business provision reduces the ceilings with respect to both section 2032A and section 6601(j). Thus, for example, if a decedent had $350,000 of qualified family-owned business interests, the entire value of his qualified family-owned business property would be excluded from the estate; if the decedent's estate also qualifies for treatment under 2032A or 6601(j), the executor could take a maximum reduction under section 2032A of $400,000 (i.e., $750,000 less $350,000), and/or could use the special 4-percent rate provided in section 6601(j) with respect to the first $650,000 in value of a qualifying business (i.e., $1,000,000 less $350,000).

C. REDUCTION IN ESTATE TAX FOR CERTAIN LAND SUBJECT TO PERMANENT CONSERVATION EASEMENT (SEC. 12303 OF THE SENATE AMENDMENT)

Present law

A deduction is allowed for estate and gift tax purposes for a contribution of a qualified real property interest to a charity (or other qualified organization) exclusively for conservation purposes (secs. 2055(f), 2522(d)). For this purpose, a qualified real property interest means the entire interest of the transferor in real property (other than certain mineral interests), a remainder interest in real property, or a perpetual restriction on the use of real property (sec. 170(h)). A "conservation purpose" is (1) preservation of land for outdoor recreation by, or the education of, the general public, (2) preservation of natural habitat, (3) preservation of open space for scenic enjoyment of the general public or pursuant to a governmental conservation policy, and (4) preservation of historically important land or certified historic structures. A contribution is treated as "exclusively for conservation purposes" only if the conservation purpose is protected in perpetuity.

House bill

No provision.

Senate amendment

The Senate amendment provides that an executor may elect to exclude from the taxable estate 50 percent of the value of any land subject to a qualified conservation easement that meets the following requirements: (1) the land must be located within 25 miles of a metropolitan area or a national park or wilderness area; (2) the land must have been owned by the decedent or a member of the decedent's family at all times during the three-year period ending on the date of the decedent's death; and (3) a qualified conservation contribution of a qualified real property interest had been granted by the transferor or a member of his or her family. For this purpose, preservation of a historically important land area or a certified historic structure does not qualify as a conservation purpose. To the extent that the value of such land is excluded from the taxable estate, the basis of such land acquired at death is a carryover basis (i.e., the basis is not stepped-up to its fair market value at death). Debt-financed property is not eligible for the exclusion.

The exclusion amount is calculated based on the value of the property after the conservation easement has been placed on the property. The exclusion from the taxable estate does not extend to the value of any development rights retained by the decedent or donor, although payment for estate taxes on retained development rights may be deferred for up to two years, or until the disposition of the property, whichever is earlier.

The 50-percent exclusion from the taxable estate for land subject to a qualified conservation easement may only be taken to the extent that the value of such land, plus the value of qualified family-owned business interests that qualify for the reduction in estate taxes, does not exceed $5 million.

If the value of the conservation easement is less than 30 percent of (1) the value of the land without the easement, reduced by (2) the value of any retained development rights, then the exclusion percentage is reduced. The reduction in the exclusion percentage is equal to two percentage points for each point that the above ratio falls below 30 percent.

The Senate amendment also provides that the granting of a qualified conservation easement (as defined above) is not treated as a disposition triggering the recapture provisions of section 2032A.

Effective date.—Effective for decedents dying after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment, with the following modifications.

The conference agreement provides an exclusion from the taxable estate of 40 percent of the value of any land subject to a qualified conservation easement. As in the Senate amendment, if the value of the conservation easement is less than 30 percent of (1) the value of the land without the easement, reduced by (2) the value of any retained development rights, then the exclusion percentage is reduced. The reduction in the exclusion percentage is equal to two percentage points for each point that the above ratio falls below 30 percent. In making this calculation, the value of the land without the easement is to be determined by taking into account any local, State, or Federal law that restricts the development of the land, and the extent to which any prior easements restrict the use of the land.

The conference agreement expands the category of land eligible for the exclusion to include land located within 10 miles of an Urban National Forest (as designated by the Forest Service of the United States Department of Agriculture) as well as land located within 25 miles of a metropolitan area or a national park or wilderness area.

D. MODIFICATION OF GENERATION-SKIPPING TRANSFER TAX FOR TRANSFERS TO INDIVIDUALS WITH DECEASED PARENTS (SEC. 14634 OF THE HOUSE BILL AND SEC. 12304 OF THE SENATE AMENDMENT)

Present law

A generation-skipping transfer tax ("GST" tax) generally is imposed on transfers to an individual who is in more than one generation below that of the transferor. Transfers subject to the GST tax include direct skips, taxable terminations and taxable distributions. For this purpose, a direct skip is any transfer subject to estate or gift tax of an interest in property to a skip person (sec. 2612(c)(1)). A taxable termination is a termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in trust unless, immediately after such termination, a non-skip person has an interest in the property, or unless at no time after the termination may a distribution (including a distribution upon termination) be made from the trust to a skip person (sec. 2612(a)). A taxable distribution is a distribution from a trust to a skip person (other than a taxable termination or a direct skip)(sec. 2612(b)).

Under the "predeceased parent exception," a direct skip transfer to a transferor's grandchild is not subject to the generation skipping transfer ("GST") tax if the child of the transferor who was the grandchild's parent is deceased at the time of the transfer (sec. 2612(c)(2)). This "predeceased parent exception" to the GST tax is not applicable to (1) transfers to collateral heirs, e.g., grandnieces or grandnephews, or (2) taxable terminations or taxable distributions.

House bill

The House bill extends the predeceased parent exception to transfers to collateral heirs, provided that the decedent has no living lineal descendants at the time of the transfer.

In addition, the House bill extends the predeceased parent exception to taxable terminations and taxable distributions, provided that the parent of the relevant beneficiary was dead at the earliest time that the transfer (from which the beneficiary's interest in the property was established) was subject to estate or gift tax.

Effective date.—Effective for generation-skipping transfers occurring after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill, except for the effective date.

Effective date.—Effective for generation-skipping transfers occurring after December 31, 1994.

Conference agreement

The conference agreement follows the Senate amendment.

E. ESTATE TAX RECAPTURE FROM CASH LEASES OF SPECIALLY-VALUED PROPERTY (SEC. 12305 OF THE SENATE AMENDMENT)

Present law

An executor may elect to value certain "qualified real property" used in farming or other qualifying trade or business at its current use value rather than its highest and best use. If, after the special-use valuation election is made, the heir who acquired the real property ceases to use it in its qualified use within 10 years (15 years for individuals dying before 1982) of the decedent's death, an additional estate tax is imposed in order to "recapture" the benefit of the special-use valuation (sec. 2032A(c)).

Some courts have held that the cash rental of specially-valued property after the death of the decedent is not a qualified use and, therefore, results in the imposition of the recapture tax. A decedent's surviving spouse, however, is not treated as failing to use the property in a qualified use solely because the spouse rents the property to a member of the spouse's family on a net cash basis (sec. 2032A(b)(5)).

House bill

No provision.

Senate amendment

The Senate amendment provides that the cash lease of specially-valued real property by a lineal descendant of the decedent to a member of the lineal descendant's family, who continues to operate the farm or closely held business, does not cause the qualified use of such property to cease for purposes of imposing the additional estate tax under section 2032A(c). No inference is intended as to whether the cash lease of specially-valued real property is a qualified use of such property under present law.

Effective date.—Effective for cash rentals after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment.

V. EXPIRING TAX PROVISIONS

A. TEMPORARY EXTENSION OF CERTAIN PROVISIONS

1. WORK OPPORTUNITY TAX CREDIT (SEC. 13101 OF THE HOUSE BILL)

Present law

General rules.—Prior to January 1, 1995, the targeted jobs tax credit was available on an elective basis for employers hiring individuals from one or more of nine targeted groups. The credit generally was equal to 40 percent of qualified first-year wages.

Certification of members of targeted groups.—In general, an individual was not treated as a member of a targeted group unless certification that the individual was a member of such a group was received or requested in writing by the employer from the designated local agency on or before the day on which the individual began work for the employer.

Targeted groups eligible for the credit.—The nine groups eligible for the credit were either recipients of payments under means-tested transfer programs, economically disadvantaged (as measured by family income), or disabled individuals:

(1) Vocational rehabilitation referrals;
(2) Economically disadvantaged youths;
(3) Economically disadvantaged former convicts;
(4) Economically disadvantaged summer youth employees;
(5) AFDC recipients;
(6) Economically disadvantaged Vietnam-era veterans;
(7) Economically disadvantaged cooperative education students;
(8) SSI recipients; and
(9) General assistance recipients.

Other rules.—No credit was available for wages paid to replacement employees during strikes or lockouts.

Minimum employment period.—No credit was allowed for wages paid unless the eligible individual was either (1) employed by the employer for at least 90 days (14 days in the case of economically disadvantaged summer youth employees) or (2) had completed at least 120 hours (20 hours for summer youth) of services performed for the employer.

Length of extension.—Expired January 1, 1995.

House bill

General rules.—The House bill replaces the targeted jobs tax credit with the "work opportunity tax credit." The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of five targeted groups. The credit generally is equal to 35 percent of qualified wages.

Certification of members of targeted groups.—In general, an individual is not treated as a member of a targeted group unless: (1) on or before the day the individual begins work for the employer, the employer received in writing a certification from the designated local agency that the individual is a member of a specific targeted group, or (2) on or before the day the individual is offered work with the employer, a pre-screening notice is completed with respect to that individual and within 14 days after the individual begins work for the employer, the employer submits such notice to the designated local agency as part of a written request for certification. The pre-screening notice will contain the information provided to the employer by the individual that forms the basis of the employer's belief that the individual is a member of a targeted group.

Targeted groups eligible for the credit.—There are five groups eligible for the credit:

(1) Vocational rehabilitation referral;
(2) High-risk youth;
(3) Qualified ex-felon;
(4) Qualified summer youth employee; and
(5) Aid to Families with Dependent Children ("AFDC") or successor program (with special rules for qualified veterans)

Other rules.—The House bill does not include the prior-law rule denying the credit in the case of strikes or lockouts.

Minimum employment period.—No credit is allowed for wages paid unless the eligible individual is employed by the employer for at least 180 days (20 days in the case of a qualified summer youth employee) or 500 hours (120 hours in the case of a qualified summer youth employee).

Length of extension.—January 1, 1996 through December 31, 1997 (two years).

Senate amendment [19]

General rules.—Same as the House bill, with the addition of a sixth targeted group: "qualified veterans." Unlike the House bill, the Senate amendment expands eligibility to certain veterans certified as receiving assistance under a food stamp program.

Certification of members of targeted groups.—Same as the House bill.

Targeted groups eligible for the credit.—Same as the House bill, with the addition of a sixth targeted group "qualified veterans." Unlike the House bill, the Senate amendment extends eligibility to certain veterans certified as receiving assistance under a food stamp program.

[19] The Senate amendment was inadvertently stricken in the enrolling of the Senate amendment. This explanation is of the Senate amendment as intended to be included.

Other rules.—Retains the prior-law rule denying the credit in the case of strikes or lockouts.

Minimum employment period.—Same as the House bill, except 500 hours reduced to 400 hours.

Length of extension.—January 1, 1996, through February 28, 1997 (14 months).

Conference agreement

The conference agreement provides for the following:

General rules.—The conference agreement follows the Senate amendment.

Certification of members of targeted groups.—The conference agreement follows the House bill and the Senate amendment.

Targeted groups eligible for the credit.—The conference agreement follows the Senate amendment.

Other rules.—The conference agreement follows the Senate amendment.

Minimum employment period.—The conference agreement follows the House bill.

Length of extension.—The conference agreement provides for a one-year extension, January 1, 1996 through December 31, 1996.

Effective date.—The credit is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 1996, and before January 1, 1997.

2. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE (SEC. 13102 OF THE HOUSE BILL AND SEC. 12402 OF THE SENATE AMENDMENT)

Present law

For taxable years beginning before January 1, 1995, an employees's gross income and wages did not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts were paid or incurred pursuant to an educational assistance program that met certain requirements. This exclusion, which expired for taxable years beginning after December 31, 1994, was limited to $5,250 of educational assistance with respect to an individual during a calendar year. The exclusion applied whether or not the education was job related. In the absence of the exclusion, educational assistance is excludable from income only if it is related to the employee's current job.

House bill

The House bill extends the exclusion for employer-provided educational assistance to taxable years beginning after December 31, 1994, and before January 1, 1998. In years beginning after December 31, 1995, the exclusion does not apply with respect to graduate-level courses.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1994, and before January 1, 1998, and the restriction of the exclusion to undergraduate education is effective for taxable years beginning after December 31, 1995.

Senate amendment

The Senate amendment extends the exclusion for educational assistance for taxable years beginning after December 31, 1994, and before March 1, 1997. In the case of a taxable year beginning in 1997, the maximum amount that can be excluded is one-sixth of $5,250, or $875, and only amounts pad by the employer before March 1, 1997, are taken into account.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1994, and before March 1, 1997.

Conference agreement

The conference agreement follows the House bill, except that the exclusion for educational assistance is extended for taxable years beginning after December 31, 1994, and before January 1, 1997. As under the House bill, the exclusion does not apply to graduate-level education after December 31, 1995.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1994, and before January 1, 1997, and the restriction of the exclusion to undergraduate education is effective for taxable years beginning after December 31, 1995.

3. RESEARCH AND EXPERIMENTATION TAX CREDIT (SEC. 13103 OF THE HOUSE BILL AND SEC. 12402 OF THE SENATE AMENDMENT)

Present and prior law

General rule

Prior to July 1, 1995, section 41 of the Internal Revenue Code provided for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceeded its base amount for that year. The research tax credit expired and does not apply to amounts paid or incurred after June 30, 1995.

A 20-percent research tax credit also applied to the *excess* of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) *over* (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation is commonly referred to as the "university basic research credit" (see sec. 41(e)).

Computation of allowable credit

Except for certain university basic research payments made by corporations, the research tax credit applies only to the extent that the taxpayer's qualified research expenditures for the current taxable year exceed its base amount. The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984-1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (so-called "start-up firms") are assigned a fixed-base percentage of 3 percent.[20]

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related entities, research expenditures and gross receipts of the taxpayer are aggregated with research expenditures and gross receipts of certain related persons for purposes of computing any allowable credit (sec. 41(f)(1)). Special rules apply for computing the credit when a major portion of a business changes hands, under which qualified research expenditures and gross receipts for periods prior to the change or ownership of a trade or business are treated as transferred with the trade or business that gave rise to those expenditures and receipts for purposes of recomputing a taxpayer's fixed-base percentage (sec. 41(f)(3)).

Eligible expenditures

Qualified research expenditures eligible for the research tax credit consist of: (1) "in-house" expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of amounts paid by the taxpayer for qualified research conducted on the taxpayer's behalf (so-called "contract research expenses").

To be eligible for the credit, the research must not only satisfy the requirements of present-law section 174 but must be undertaken for the purpose of discovering information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and must pertain to functional aspects, performance, reliability, or quality of a business component. Research does not qualify for the credit if substantially all of the activities relate to style, taste, cosmetic, or seasonal design factors (sec. 41(d)(3)). In addition, research does not qualify for the credit if conducted after the beginning of commercial production of the business component, if related to the adaptation of an existing business component to a particular customer's requirements, if related to the duplication

[20] The Omnibus Budget Reconciliation Act of 1993 included a special rule designed to gradually recompute a start-up firm's fixed-base percentage based on its actual research experience. Under this special rule, a start-up firm (i.e., any taxpayer that did not have gross receipts in at least three years during the 1984-1988 period) will be assigned a fixed-base percentage of 3 percent for each of its first five taxable years after 1993 in which it incurs qualified research expenditures. In the event that the research credit is extended beyond the scheduled June 30, 1995 expiration date, a start-up firm's fixed-base percentage for its sixth through tenth taxable years after 1993 in which it incurs qualified research expenditures will be a phased-in ratio based on its actual research experience. For all subsequent taxable years, the taxpayer's fixed-base percentage will be its actual ratio of qualified research expenditures to gross receipts for any five years selected by the taxpayer from its fifth through tenth taxable years after 1993 (sec. 41(c)(3)(B)).

of an existing business component from a physical examination of the component itself or certain other information, or if related to certain efficiency surveys, market research or development, or routine quality control (sec. 41(d)(4)).

Expenditures attributable to research that is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

House bill

The House bill extends the research tax credit (including the university basic research credit) for the period July 1, 1995, through December 31, 1997.

The House bill also expands the definition of "start-up firms" under section 41(c)(3)(B)(I) to include any firm if the first taxable year in which such firm had both gross receipts and qualified research expenses began after 1983.[21]

In addition, the House bill allows taxpayers to elect an alternative incremental research credit regime. If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 1.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1 percent (i.e., the base amount equals 1 percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 2.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of 2 percent. A credit rate of 2.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 2 percent. An election to be subject to this alternative incremental credit regime may be made only for a taxpayer's first taxable year beginning after June 30, 1995, and such an election applies to that taxable year and all subsequent years unless revoked with the consent of the Secretary of the Treasury.

The House bill also provides for a special rule for payments made to a qualified research consortium. Under this special rule, 75 percent of amounts paid to a qualified research consortium for qualified research are treated as qualified research expenses eligible for the research credit (rather than 65 percent under the present-law section 41(b)(3) rule governing contract research expenses). For this purpose, a qualified research consortium is de-

[21] In applying the start-up firm rules, the test is whether a taxpayer, in fact, both incurred research expenses (which under the present-law rules would be qualified research expenses) and had gross receipts in a particular year, not whether the taxpayer claimed a research tax credit for that year.

fined as a nonprofit scientific research organization that is described in section 501(c)(3) (but not a college or university) if (1) at least 15 unrelated persons paid amounts to the organization for qualified research during the calendar year in which the taxable year of the taxpayer begins, (2) no three persons paid more than 50 percent of such amounts, and (3) no one person paid more than 20 percent of such amounts.

Effective date.—Extension of the research tax credit is effective for expenditures paid or incurred during the period July 1, 1995, through December 31, 1997. The modification to the definition of "start-up firms" is effective for taxable years ending after June 30, 1995. Taxpayers may elect the alternative research credit regime (with lower fixed-base percentages and lower credit rates) for taxable years beginning after June 30, 1995. The special rule that treats 75 percent of qualified research consortium payments as qualified research expenses is effective for taxable years beginning after June 30, 1995.

Senate amendment

The Senate amendment extends the research tax credit (including the university basic research credit) for the period July 1, 1995, through February 28, 1997.

In addition, the Senate amendment includes the same provision contained in the House bill expanding the definition of "start-up firms" under section 41(c)(3)(B)(I) to include any firm if the first taxable year in which such firm had both gross receipts and qualified research expenses began after 1983.

Effective date.—Extension of the research tax credit is effective for expenditures paid or incurred during the period July 1, 1995, through February 28, 1997. The modification to the definition of "start-up firms" is effective for taxable years ending after June 30, 1995.

Conference agreement

The conference agreement extends the research tax credit (including the university basic research credit) for the period July 1, 1995, through December 31, 1996.

In addition, the conference agreement includes (1) the expanded definition of "start-up firms" from both the House bill and Senate amendment, (2) the provision from the House bill that allows taxpayers to elect an alternative incremental credit regime, and (3) the provision from the House bill that treats 75 percent of qualified research consortium payments as qualified research expenses.

Effective date.—Extension of the research tax credit is effective for expenditures paid or incurred during the period July 1, 1995, through December 31, 1996. The modification to the definition of "start-up firms" is effective for taxable years ending after June 30, 1995. Taxpayers may elect the alternative research credit regime (with lower fixed-base percentages and lower credit rates) for taxable years beginning after June 30, 1995. The special rule that treats 75 percent of qualified research consortium payments as qualified research expenses is effective for taxable years beginning after June 30, 1995.

4. EXCLUSION FOR EMPLOYER-PROVIDED GROUP LEGAL SERVICES; TAX EXEMPTION FOR QUALIFIED GROUP LEGAL SERVICES ORGANIZATIONS (SEC. 12404 OF THE SENATE AMENDMENT)

Present law

Under present law, there is no exclusion for employer-provided group legal services, or tax exemption for qualified group legal services organizations. Under prior law, employees were not subject to income or employment tax on amounts contributed by an employer to a qualified group legal services plan (or benefits provided under such a plan). The exclusion did not apply to the extent that the value of insurance against legal costs incurred by the individual (or spouse or dependents) provided under the plan for a year exceeded $70. The exclusion for group legal services benefits expired after June 30, 1992.

In addition, prior law provided tax-exempt status for an organization the exclusive function of which was to provide legal services or indemnification against the cost of legal services provided through a qualified group services plan. The tax exemption for such an organization expired for taxable years beginning after June 30, 1992.

House bill

No provision.

Senate amendment

The Senate amendment reinstates the exclusion from income for contributions to (and benefits under) employer-provided group legal services plans and the exemption from tax for certain group legal services organizations from January 1, 1996, through February 28, 1997. The exclusion is available with respect to contributions to employer-provided group legal services plans through February 28, 1997, but the limit on the value of insurance provided under the plan for taxable years beginning in 1997 is one-sixth of $70 or $12.

Effective date.—The provision is effective for taxable years beginning after December 31, 1995, and before February 28, 1997.

Conference agreement

The conference agreement does not include the Senate amendment.

5. ORPHAN DRUG TAX CREDIT (SEC. 13105 OF THE HOUSE BILL AND SEC. 12404 OF THE SENATE AMENDMENT)

Present and prior law

Prior to January 1, 1995, a 50-percent nonrefundable tax credit was allowed for qualified clinical testing expenses incurred in testing of certain drugs for rare diseases or conditions, generally referred to as "orphan drugs." Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. A rare disease or condition is defined as one that (1) affects less than 200,000 persons in the United States or (2) affects more than 200,000 persons, but for which there is no reasonable expectation that businesses could recoup the costs of developing a drug for it from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

Under prior law, the orphan drug tax credit could be claimed by a taxpayer only to the extent that its regular tax liability for the year the credit was earned exceeded its tentative minimum tax for that year, after regular tax was reduced by nonrefundable personal credits and the foreign tax credit.[22] Unused credits could not be carried back or carried forward to reduce taxes in other years.

The orphan drug tax credit expired after December 31, 1994.

House bill

The House bill extends the orphan drug tax credit for the period January 1, 1995, through December 31, 1997.

Effective date.—Qualified clinical testing expenses paid or incurred during the period January 1, 1995, through December 31, 1997.

Senate amendment

The Senate amendment extends the orphan drug tax credit for the period January 1, 1995, through February 28, 1997.

In addition, the Senate amendment allows taxpayers to carry back unused credits to three years preceding the year the credit is earned and to carry forward unused credits to 15 years following the year the credit is earned.

Effective date.—Qualified clinical testing expenses incurred during the period January 1, 1995, through February 28, 1997. The provision allowing for the carry back and carry forward of unused credits is effective for taxable years ending after December 31, 1994, except that credits may not be carried back to a taxable year beginning before January 1, 1995.

Conference agreement

The conference agreement extends the orphan drug tax credit for the period January 1, 1995, through December 31, 1996.

The conference agreement includes the provision from the Senate amendment that allows taxpayers to carry back unused credits to three years preceding the year the credit is earned and to carry forward unused credits to 15 years following the year the credit is earned.

Effective date.—Qualified clinical testing expenses incurred during the period January 1, 1995, through December 31, 1996. The provision allowing for the carry back and carry forward of unused credits is effective for taxable years ending after December 31, 1994, except that credits may not be carried back to a taxable year beginning before January 1, 1995.

[22] To the extent that the orphan drug tax credit could not be used by reason of the minimum tax limitation, the taxpayer's minimum tax credit was increased (sec. 53(d)(1)(B)(iii)).

6. CONTRIBUTIONS OF APPRECIATED STOCK TO PRIVATE FOUNDATIONS (SEC. 13104 OF THE HOUSE BILL AND SEC. 12405 OF THE SENATE AMENDMENT)

Present and prior law

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair market value of property contributed to a charitable organization.[23] However, in the case of a charitable contribution of short-term gain, inventory, or other ordinary income property, the amount of the deduction generally is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose.[24]

In cases involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the taxpayer's basis in the property. However, under a special rule contained in section 170(e)(5), taxpayers were allowed a deduction equal to the fair market value of "qualified appreciated stock" contributed to a private foundation prior to January 1, 1995. Qualified appreciated stock was defined as publicly traded stock which is capital gain property. The fair-market-value deduction for qualified appreciated stock donations applied only to the extent that total donations made by the donor to private foundations of stock in a particular corporation did not exceed 10 percent of the outstanding stock of that corporation. For this purpose, an individual was treated as making all contributions that were made by any member of the individual's family. This special rule contained in section 170(e)(5) expired after December 31, 1994.

House bill

The House bill extends for the period January 1, 1995, through December 31, 1997, the special rule contained in section 170(e)(5) for contributions of qualified appreciated stock made to private foundations.[25]

Effective date.—The provision is effective for contributions of qualified appreciated stock to private foundations made during the period January 1, 1995, through December 31, 1997.

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[23] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

[24] As part of the Omnibus Budget Reconciliation Act of 1993, Congress eliminated the treatment of contributions of appreciated property (real, personal, and intangible) as a tax preference for alternative minimum tax (AMT) purposes. Thus, if a taxpayer makes a gift to charity of property (other than short-term gain, inventory, or other ordinary income property, or gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim the same fair-market-value deduction for both regular tax and AMT purposes (subject to present-law percentage limitations).

[25] If, during this period, a taxpayer contributes qualified appreciated stock as defined in section 170(e)(5) and the amount of such contribution exceeds the percentage limitation under section 170(b)(1)(D), the excess may be carried over to succeeding taxable years. See, e.g., LTR 9444029, LTR 9424020.

Senate amendment

The Senate amendment extends for the period January 1, 1995, through February 28, 1997, the special rule contained in section 170(e)(5) for contributions of qualified appreciated stock made to private foundations.

Effective date.—The provision is effective for contributions of qualified appreciated stock to private foundations made during the period January 1, 1995, through February 28, 1997.

Conference agreement

The conference agreement extends for the period January 1, 1995, through December 31, 1996, the special rule contained in section 170(e)(5) for contributions of qualified appreciated stock made to private foundations.

Effective date.—The provision is effective for contributions of qualified appreciated stock to private foundations made during the period January 1, 1995, through December 31, 1996.

7. TRANSPORTATION FUELS TAX EXEMPTION FOR FUEL USED IN COMMERCIAL AVIATION (SEC. 13111 OF THE HOUSE BILL AND SEC. 12407 OF THE SENATE AMENDMENT)

Present law

A 4.3-cents-per-gallon excise tax is imposed on fuel used in most transportation modes. This tax was enacted by the Omnibus Budget Reconciliation Act of 1993. Fuel used in commercial aviation was exempt before October 1, 1995.

House bill

The House bill extends the commercial aviation fuel tax exemption for two years, through September 30, 1997, and provides for refunds of excise taxes paid between October 1, 1995 and the date of the bill's enactment.

The Treasury Department is required to study and report on relative excise tax burdens, and Federal benefits financed with those taxes, for different transportation sectors.

Effective date.—October 1, 1995.

Senate amendment

The Senate amendment is the same as the House bill, except the commercial aviation fuels tax exemption is extended through February 28, 1997, and the Treasury Department study is only requested in legislative history.

Effective date.—Same as the House bill.

Conference agreement

The conference agreement follows the House bill with regard to the period when the exemption is extended (i.e., through September 30, 1997), and the Senate amendment with regard to the Treasury Department study. Extension of this exemption is contingent upon extension through September 30, 1996, of the present-law Airport and Airway Trust Fund excise taxes as part of the conference agreement.

8. AIRPORT AND AIRWAY TRUST FUND EXCISE TAXES (SEC. 13116 OF THE HOUSE BILL)

Present law

Excise taxes are imposed on the following to fund the Airport and Airway Trust Fund program:

(1) domestic passenger tickets;
(2) domestic freight waybills;
(3) international departures; and
(4) noncommercial aviation fuel.

These taxes are scheduled to expire after December 31, 1995.

House bill

The House bill extends the Airport and Airway Trust Fund excise taxes through September 30, 1996.

Effective date.—January 1, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. The extension of the exemption from the 4.3-cents-per-gallon transportation fuels excise tax included in the conference agreement is contingent upon extension of the Airport and Airway Trust Fund excise taxes through September 30, 1996, as part of this legislation.

9. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES (SEC. 12943 OF THE SENATE AMENDMENT)

Present law

The Internal Revenue Service ("IRS") 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 generally charges a fee for requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The Uruguay Round Agreements Act extended the IRS user fee program for five years (until October 1, 2000).

House bill

No provision.

Senate amendment

The IRS user fees are extended for two additional years (until October 1, 2002).

Effective date.—The provision is effective on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

B. TERMINATION OF CERTAIN TAX CREDITS

1. TAX CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE SOURCES (SEC. 13621 OF THE HOUSE BILL)

Present law

A tax credit is allowed for electricity produced from wind and closed-loop biomass facilities. The credit applies to production from property placed in service before July 1, 1999.

House bill

The House bill limits the credit to production from property placed in service (1) before September 14, 1995, or (2) before September 14, 1996, pursuant to a binding contract in existence on September 13, 1995.

Effective date.—Date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. LOW-INCOME HOUSING TAX CREDIT (SEC. 13636 OF THE HOUSE BILL)

Present law

A tax credit, claimed over a 10-year period is allowed for rental housing occupied by tenants having incomes below specified levels. The credit generally has a present value of 70 percent (new construction) or 30 percent (existing housing and most housing also receiving other Federal subsidies).

The tax credit is subject to annual per-State limitations of $1.25 per resident. Credits that remain unallocated by States after prescribed periods are reallocated to other States through a "national pool."

House bill

The House bill sunsets the credit generally for housing placed in service after December 31, 1997. The House bill also repeals the "national pool" after December 31, 1995.

Effective date.—Date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

C. SUPERFUND AND OIL SPILL LIABILITY TAXES

1. EXTEND SUPERFUND EXCISE TAXES AND CORPORATE ENVIRONMENTAL INCOME TAX (SEC. 12411 OF THE SENATE AMENDMENT)

Present law

Four taxes are imposed to fund the Hazardous Substance Superfund Trust Fund program:

(1) an excise tax on petroleum and imported refined products;

(2) an excise tax on certain hazardous chemicals;

(3) an excise tax on imported substances made with the chemicals subject to the tax in (2), above; and

(4) an income tax on corporations calculated using the alternative minimum tax rules.

These taxes are scheduled to expire after December 31, 1995. Revenues from these taxes are deposited in the Hazardous Substance Superfund Trust Fund.

House bill

No provision.

Senate amendment

The Senate amendment extends the three Superfund excise taxes through September 30, 2002, and the corporate environmental income tax through taxable years beginning before January 1, 1998. Revenues from these taxes would continue to be deposited in the Hazardous Substance Superfund Trust Fund throughout the extension period.

Effective date.—Date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with modifications. The three superfund excise taxes (taxes on petroleum and refined products, on certain hazardous chemicals, and on certain imported substances) are extended through September 30, 1996. Revenues from these taxes will continue to be deposited in the Hazardous Substance Superfund Trust Fund during the period January 1, 1996 through July 31, 1996; revenues attributable to taxes imposed during the period August 1, 1996 through September 30, 1996, will be retained in the General Fund.

The corporate environmental income tax is extended for one year, through taxable years beginning before January 1, 1997. Revenues attributable to this tax will continue to be deposited in the Hazardous Substance Superfund Trust Fund throughout the extension period.

2. REINSTATE OIL SPILL LIABILITY TRUST FUND EXCISE TAX (SEC. 12412 OF THE SENATE AMENDMENT)

Present law

A five-cents-per-barrel excise tax was imposed before January 1, 1995, to fund the Oil Spill Liability Trust Fund program.

House bill

No provision.

Senate amendment

The Senate amendment reinstates the Oil Spill Liability Trust Fund tax through September 30, 2002.

Effective date.—January 1, 1996.

Conference agreement

The conference agreement follows the Senate amendment.

D. OTHER FUELS TAX PROVISIONS

1. EXTEND EXPIRED ETHANOL BLENDER REFUND PROVISION (SEC. 12421 OF THE SENATE AMENDMENT)

Present law

Before October 1, 1995, persons who blended tax-paid gasoline and ethanol for use as a highway fuel could claim an expedited refund equal to the 54-cents-per-gallon subsidy for ethanol.

House bill

No provision.

Senate amendment

The Senate amendment reinstates the expedited refund provision during the period through September 30, 1999, and provides a special interest accrual rule for the period October 1, 1995, to the date of enactment.

Effective date.—Date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

2. EXTEND TAX CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE (SEC. 12422 OF THE SENATE AMENDMENT)

Present law

A tax credit is allowed for fuel produced from certain "nonconventional sources" (the "section 29 credit"). In the case of synthetic fuel produced from coal and gas produced from biomass, the credit is available only for fuel from facilities placed in service before January 1, 1997, pursuant to a binding contract entered into before January 1, 1996.

House bill

No provision.

Senate amendment

The Senate amendment extends the binding contract and placed in service dates for coal and biomass facilities for one year.

Effective date.—Date of enactment.

Conference agreement

The conference agreement follows the Senate amendment with a modification limiting the extension of the binding contract date to six months.

3. EXEMPT STATES EXEMPT FROM CLEAN AIR ACT DIESEL DYEING REQUIREMENT FROM SIMILAR EXCISE TAX DYEING REQUIREMENT (SEC. 14733 OF THE HOUSE BILL)

Present law

An excise tax totaling 24.4 cents per gallon is imposed on diesel fuel. The diesel fuel tax is imposed on removal of the fuel from a terminal facility. Present law provides that tax is imposed on all diesel fuel removed from terminal facilities unless the fuel is destined for a nontaxable use and is indelibly dyed pursuant to Treasury Department regulations.

A similar dyeing regime exists for diesel fuel under the Clean Air Act. Urban areas in the State of Alaska were exempted from the Clean Air Act, but not the excise tax, dyeing regime for three years (until October 1, 1996); the exemption for more remote areas is permanent.

House bill

The House bill exempts diesel fuel sold in the State of Alaska from the excise tax diesel dyeing requirement during the period when that State is exempt from the Clean Air Act dyeing requirement.

Effective date.—First calendar quarter beginning after enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except the exemption is expanded to include diesel fuel removed from terminal facilities in any other State that is exempt from the Clean Air Act dyeing regime (as that Act is in effect on the date the conference agreement is enacted).

4. SUSPEND IMPOSITION OF DIESEL FUEL TAX ON RECREATIONAL MOTORBOATS (SEC. 12431 OF THE SENATE AMENDMENT)

Present law

Diesel fuel used in recreational motorboats is taxed at 24.4 cents per gallon. Diesel fuel used in commercial vessels is not taxed.

All diesel fuel is either taxed or dyed when it is removed from pipeline terminals. Dyed diesel fuel may not be used in a taxable use (i.e., recreational boats). Nontaxable users of undyed diesel fuel may claim refunds of tax paid on the fuel they use.

House bill

No provision.

Senate amendment

The Senate amendment suspends imposition of tax on diesel fuel used in recreational boats for the period January 1, 1996, through February 28, 1997.

The Senate amendment further requests (in the accompanying legislative history) the Treasury Department to study alternative tax regimes that would achieve comparable tax compliance to present law for the marine sector.

Effective date.—January 1, 1996.

Conference agreement

The conference agreement follows the Senate amendment, except the expiration date of the provision is June 30, 1997.

E. EXTENSIONS OF OTHER PROVISIONS

1. PERMANENT EXTENSION OF FUTA EXEMPTION FOR ALIEN AGRICULTURAL WORKERS (SEC. 13106 OF THE HOUSE BILL)

Present law

Generally, the Federal Unemployment Tax ("FUTA") is imposed on farm operators who (1) employ 10 or more agricultural workers for some portion of each of 20 different days, each day being in a different calendar week or (2) have a quarterly payroll for agricultural services of at least $20,000. An exclusion from FUTA was provided, however, for labor performed by an alien admitted to the United States to perform agricultural labor under section 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act. This exclusion was effective for labor performed before January 1, 1995.

House bill

The House bill permanently extends the exemption.

Effective date.—Effective for labor performed on or after January 1, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective date.—Effective for labor performed on or after January 1, 1995.

2. TAX INFORMATION SHARING: EXTEND ACCESS TO TAX INFORMATION FOR THE DEPARTMENT OF VETERANS AFFAIRS (SEC. 13501 OF THE HOUSE BILL)

Present law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec.

7431). No tax information may be furnished by the Internal Revenue Service (IRS) to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Among the disclosures permitted under the Code is disclosure to the Department of Veterans Affairs (DVA) of self-employment tax information and certain tax information supplied to the Internal Revenue Service and Social Security Administration by third parties. Disclosure is permitted to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension, health care, and other programs (sec. 6103(l)(7)(D)(viii)). The income tax returns filed by the veterans themselves are not disclosed to DVA.

The DVA is required to comply with the safeguards currently contained in the Code and in section 1137(c) of the Social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The DVA disclosure provision is scheduled to expire after September 30, 1998.

House bill

The House bill permanently extends the authority to disclose tax information to the DVA.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except that the provision is extended through September 30, 2002.

VI. TAXPAYER BILL OF RIGHTS 2 PROVISIONS

1. TAXPAYER ADVOCATE

A. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE (SEC. 13301 OF THE HOUSE BILL)

Present law

The Office of the Taxpayer Ombudsman was created by the Internal Revenue Service (IRS) in 1979. The Taxpayer Ombudsman's duties are to serve as the primary advocate, within the IRS, for taxpayers. As the taxpayers' advocate, the Taxpayer Ombudsman participates in an ongoing review of IRS policies and procedures to determine their impact on taxpayers, receives ideas from the public concerning tax administration, identifies areas of the tax law that confuse or create an inequity for taxpayers, and supervises cases handled under the Problem Resolution Program. Under current procedures, the Taxpayer Ombudsman is selected by the Commissioner of the IRS and serves at the Commissioner's discretion.

House bill

The House bill establishes a new position, Taxpayer Advocate, within the IRS. This replaces the position of Taxpayer Ombudsman. The Taxpayer Advocate is appointed by and reports directly to the Commissioner. Compensation of the Taxpayer Advocate is at a level equal to that of the highest level official reporting directly to the Deputy Commissioner of the IRS.

The House bill also establishes the Office of Taxpayer Advocate within the IRS. The functions of the office are (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

The Taxpayer Advocate is required to make two annual reports to the tax-writing Committees.

Effective date.—The provision is effective on the date of enactment. The first annual reports of the Taxpayer Advocate are due in June and December, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS (SEC. 13302 OF THE HOUSE BILL)

Present law

Section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance Order (TAO). TAOs may order the release of taxpayer property levied upon by the IRS and may require the IRS to cease any action, or refrain from taking any action if, in the determination of the Taxpayer Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered.

House bill

The House bill provides the Taxpayer Advocate with broader authority to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. In addition, the House bill provides that a TAO may specify a time period within which the TAO must be followed. Further, the House bill provides that only the Taxpayer Advocate, the Commissioner of the IRS, the Deputy Commissioner, or a regional problem resolution officer, may modify or rescind a TAO. Any official who modifies or rescinds a TAO must provide the Taxpayer Advocate a written explanation of the reasons for the modification or rescission.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

A. NOTIFICATION OF REASONS FOR TERMINATION OF INSTALLMENT AGREEMENTS (SEC. 13306 OF THE HOUSE BILL)

Present law

Section 6159 authorizes the IRS to enter into written installment agreements with taxpayers to facilitate the collection of tax liabilities. In general, the IRS has the right to terminate (or in some instances, alter or modify) such agreements if the taxpayer provided inaccurate or incomplete information before the agreement was entered into, if the taxpayer fails to make a timely payment of an installment or another tax liability, if the taxpayer fails to provide the IRS with a requested update of financial condition, if the IRS determines that the financial condition of the taxpayer has changed significantly, or if the IRS believes collection of the tax liability is in jeopardy. If the IRS determines that the financial condition of a taxpayer that has entered into an installment agreement has changed significantly, the IRS must provide the taxpayer with a written notice that explains the IRS determination at least 30 days before altering, modifying, or terminating the installment agreement. No notice is statutorily required if the installment agreement is altered, modified, or terminated for other reasons.

House bill

The House bill requires the IRS to notify taxpayers 30 days before altering, modifying, or terminating any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy. The IRS must include in the notification an explanation of why the IRS intends to take this action.

Effective date.—The provision is effective six months after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. ADMINISTRATIVE REVIEW OF TERMINATION OF INSTALLMENT AGREEMENTS (SEC. 13307 OF THE HOUSE BILL)

Present law

The IRS is currently testing an appeal process for various collection actions, including installment agreements, that will permit taxpayers to appeal these collection actions to Appeals Division personnel.

House bill

The House bill requires the IRS to establish additional procedures for an independent administrative review of terminations of installment agreements for taxpayers who request a review.

Effective date.—The provision is effective on January 1, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

3. ABATEMENT OF INTEREST AND PENALTIES

A. EXPANSION OF AUTHORITY TO ABATE INTEREST (SEC. 13311 OF THE HOUSE BILL AND SEC. 12501 OF THE SENATE AMENDMENT)

Present law

Any assessment of interest on any deficiency attributable in whole or in part to any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act may be abated.

House bill

The House bill permits the IRS to abate interest with respect to any unreasonable error or delay resulting from managerial acts as well as ministerial acts. This would include extensive delays resulting from managerial acts such as: the loss of records by the IRS, IRS personnel transfers, extended illnesses, extended personnel training, or extended leave. On the other hand, interest would not be abated for delays resulting from general administrative decisions. For example, the taxpayer could not claim that the IRS's decision on how to organize the processing of tax returns or its delay in implementing an improved computer system resulted in an unreasonable delay in the Service's action on the taxpayer's tax return, and so the interest on any subsequent deficiency should be waived.

Effective date.—The provision applies to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of enactment.

Senate amendment

Same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. REVIEW OF IRS FAILURE TO ABATE INTEREST (SEC. 13312 OF THE HOUSE BILL AND SEC. 12502 OF THE SENATE AMENDMENT)

Present law

Federal courts generally do not have the jurisdiction to review the IRS's failure to abate interest.

House bill

The House bill grants the Tax Court jurisdiction to determine whether the IRS's failure to abate interest for an eligible taxpayer was an abuse of discretion. The action must be brought within six months after the date of the Secretary's final determination not to abate interest. An eligible taxpayer must meet the net worth and size requirements imposed with respect to awards of attorney's fees. No inference is intended as to whether under present law any court has jurisdiction to review IRS's failure to abate interest.

Effective date.—The provision applies to requests for abatement after the date of enactment.

Senate amendment

Same as the House bill.

Conference agreement

The conference agreement does not include the House bill provision and the Senate amendment.

C. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND (SEC. 13313 OF THE HOUSE BILL)

Present law

In general, a taxpayer must pay interest on late payments of tax. An interest-free period of 10 calendar days is provided to taxpayers who pay the tax due within 10 calendar days of notice and demand.

House bill

The House bill extends the interest-free period provided to taxpayers for the payment of the tax liability reflected in the notice from 10 calendar days to 10 business days (21 calendar days, provided that the total tax liability shown on the notice of deficiency is less than $100,000).

Effective date.—The provision applies in the case of any notice and demand given after June 30, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. JOINT RETURNS

A. STUDIES OF JOINT AND SEVERAL LIABILITY FOR MARRIED PERSONS FILING JOINT TAX RETURNS AND OTHER JOINT RETURN-RELATED ISSUES (SEC. 13316 OF THE HOUSE BILL)

Present law

Spouses who file a joint tax return are each fully responsible for the accuracy of the return and for the full tax liability. This is true even though only one spouse may have earned the wages or income which is shown on the return. This is "joint and several" liability. Spouses who wish to avoid joint liability may file as a "married person filing separately."

Spouses often file a joint tax return but then later are separated or divorced. If the IRS later disputes the accuracy of the joint tax returns, one spouse may be held liable for the entire tax deficiency stemming from erroneous deductions or omitted income attributable to the other spouse. Therefore, the "innocent" spouse may be held liable for the full deficiency in a subsequent audit occurring after the separation or divorce. This has resulted in a serious hardship being imposed on an "innocent spouse" in a number of cases.

In some cases, a couple addresses the responsibility for tax liability as part of their divorce decree. However, these agreements are not binding on the IRS because the IRS was not a party to the divorce proceeding. Thus, if a former spouse violates the tax responsibilities assigned to him or her in a divorce decree, the other spouse may not rely on the decree in dealing with the IRS.

House bill

The House bill directs the Treasury Department and the General Accounting Office (GAO) to conduct separate studies analyzing several joint return-related issues.

Effective date.—The studies are due six months after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX (SEC. 13317 OF THE HOUSE BILL AND SEC. 12503 OF THE SENATE AMENDMENT)

Present law

Taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded by statute from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability before the expiration of the three-year period for making the election to file jointly.

House bill

The House bill repeals the requirement of full payment of tax liability as a precondition to switching from married filing separately status to married filing jointly status.

Effective date.—The provision applies to taxable years beginning after the date of the enactment.

Senate amendment

Same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURNS (SEC. 13318 OF THE HOUSE BILL)

Present law

The IRS does not routinely disclose collection information to a former spouse that relates to tax liabilities attributable to a joint return that was filed when married.

House bill

If a tax deficiency with respect to a joint return is assessed, and the individuals filing the return are no longer married or no longer reside in the same household, the House bill requires the IRS to disclose in writing (in response to a written request by one of the individuals) to that individual whether the IRS has attempted to collect the deficiency from the other individual, the general nature of the collection activities, and the amount (if any) collected.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

5. COLLECTION ACTIVITIES

A. MODIFICATIONS TO LIEN AND LEVY PROVISIONS

I. WITHDRAWAL OF PUBLIC NOTICE OF LIEN (SEC. 13321(A) OF THE HOUSE BILL)

Present law

The IRS must file a notice of lien in the public record, in order to protect the priority of a tax lien. A notice of tax lien provides public notice that a taxpayer owes the Government money. The IRS has discretion in filing such a notice, but may withdraw a filed notice only if the notice (and the underlying lien) was erroneously filed or if the underlying lien has been paid, bonded, or become unenforceable.

House bill

The House bill allows the IRS to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer without prejudice, if the Secretary determines that (1) the filing of the notice was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability with respect to which the lien was filed, (3) the withdrawal of the lien will facilitate collection of the tax liability, or (4) the withdrawal of the lien would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and of the Government. The IRS must also provide a copy of the notice of withdrawal to the taxpayer. The House bill also requires that, at the written request of the taxpayer, the IRS make reasonable efforts to give notice of the withdrawal of a lien to creditors, credit reporting agencies, and financial institutions specified by the taxpayer.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

II. RETURN OF LEVIED PROPERTY (SEC. 13321(B) OF THE HOUSE BILL)

Present law

The IRS is authorized to levy on the property of a taxpayer as a means of collecting unpaid taxes. The IRS is able to return levied property to a taxpayer only when the taxpayer has overpaid its liability with respect to tax, interest, and penalty for which the property was levied.

House bill

The House bill allows the IRS to return property (including money deposited in the Treasury) that has been levied upon if the Secretary determines that (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability, (3) the return of the property will facilitate collection of the tax liability, or (4) the return of the property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the Government.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

III. MODIFICATIONS IN CERTAIN LEVY EXEMPTION AMOUNTS (SEC. 13321(C) OF THE HOUSE BILL AND SEC. 12504 OF THE SENATE AMENDMENT)

Present law

Property exempt from levy includes personal property with a value of up to $1,650 and books and tools of a trade with a value of up to $1,100.

House bill

The House bill increases the exemption amount to $2,500 for personal property. This amount is indexed for inflation commencing January 1, 1996.

Effective date.—The provision is effective with respect to levies issued after December 31, 1995.

Senate amendment

Same as the House bill, except that the Senate amendment also increases the exemption amount to $1,250 for books and tools of a trade.

Conference agreement

The conference agreement follows the Senate amendment.

B. OFFERS-IN-COMPROMISE (SEC. 13322 OF THE HOUSE BILL AND SEC. 12505 OF THE SENATE AMENDMENT)

Present law

The IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if: the taxpayer is unable to pay the full amount of the tax liability and it is doubtful that the tax, interest, and penalties can be collected or there is doubt as to the validity of the actual tax liability. Amounts over $500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS Chief Counsel.

House bill

The House bill increases from $500 to $100,000 the amount requiring a written opinion from the Office of Chief Counsel. Compromises below the $100,000 threshold must be subject to continuing quality review by the IRS.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

Same as the House bill, except the threshold is $50,000.

Conference agreement

The conference agreement follows the Senate amendment.

6. INFORMATION RETURNS

A. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS (SEC. 13326 OF THE HOUSE BILL)

Present law

Federal law provides no private cause of action to a taxpayer who is injured because a fraudulent information return has been filed with the IRS asserting that payments have been made to the taxpayer.

House bill

The House bill provides that, if any person willfully files a fraudulent information return with respect to payments purported to have been made to another person, the other person may bring a civil action for damages against the person filing that return. A copy of the complaint initiating the action must be provided to the IRS. Recoverable damages are the greater of (1) $5,000 or (2) the amount of actual damages (including the costs of the action) and, in the court's discretion, reasonable attorney's fees. The court must specify in any decision awarding damages the correct amount (if any) that should have been reported on the information return. An action seeking damages under this provision must be brought within six years after the filing of the fraudulent information return, or one year after the fraudulent information return would have been discovered through the exercise of reasonable care, whichever is later.

Effective date.—The provision applies to fraudulent information returns filed after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. REQUIREMENT TO CONDUCT REASONABLE INVESTIGATIONS OF INFORMATION RETURNS (SEC. 13327 OF THE HOUSE BILL)

Present law

Deficiencies determined by the IRS are generally afforded a presumption of correctness.

House bill

The House bill provides that, in any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return (Form 1099 or Form W–2) filed by a third party and the taxpayer has fully cooperated with the IRS, the Government has the burden of producing reasonable and probative information concerning the deficiency (in addition to the information return itself). Fully cooperating with the IRS includes (but is not limited to) the following: bringing the reasonable dispute over the item of income to the attention of the IRS within a reasonable period of time, and providing (within a reasonable period of time) access to and inspection of all witnesses, information, and documents within the control of the taxpayer (as reasonably requested by the Secretary).

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

7. AWARDING OF COSTS AND CERTAIN FEES

A. UNITED STATES MUST ESTABLISH THAT ITS POSITION IN A PROCEEDING WAS SUBSTANTIALLY JUSTIFIED (SEC. 13331 OF THE HOUSE BILL)

Present law

Under section 7430, a taxpayer who successfully challenges a determination of deficiency by the IRS may recover attorney's fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." A taxpayer qualifies as a prevailing party if it: (1) establishes that the position of the United States was not substantially justified; (2) substantially prevails with respect to the amount in controversy or with respect to the most significant issue or set of issues presented; and (3) meets certain net worth and (if the taxpayer is a business) size requirements. A taxpayer must exhaust administrative remedies to be eligible to receive an award of attorney's fees.

House bill

The House bill provides that, once a taxpayer substantially prevails over the IRS in a tax dispute, the IRS has the burden of proof to establish that it was substantially justified in maintaining its position against the taxpayer. This will switch the current procedure which places the burden of proof on the taxpayer to establish that the IRS was not substantially justified in maintaining its position. Therefore, the successful taxpayer will receive an award of attorney's fees unless the IRS satisfies its burden of proof. The House bill also establishes a rebuttable presumption that the position of the United States was not substantially justified if the IRS did not follow in the administrative proceeding (1) its published regulations, revenue rulings, revenue procedures, information releases, notices, or announcements, or (2) a private letter ruling, determination letter, or technical advice memorandum issued to the taxpayer. This provision only applies to the version of IRS guidance that is most current on the date the IRS's position was taken.

Effective date.—The provision is effective for proceedings commenced after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. INCREASED LIMIT ON ATTORNEY'S FEES (SEC. 13332 OF THE HOUSE BILL)

Present law

Attorney's fees recoverable by prevailing parties as litigation or administrative costs was originally set at $75 per hour.

House bill

The House bill raises the statutory rate to $110 per hour, indexed for inflation beginning after 1996.

Effective date.—The provision applies to proceedings commenced after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

C. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT (SEC. 13333 OF THE HOUSE BILL)

Present law

To qualify for an award of attorney's fees, the taxpayer must have exhausted the administrative remedies available within the IRS.

House bill

The House bill provides that any failure to agree to an extension of the statute of limitations cannot be taken into account for purposes of determining whether a taxpayer has exhausted the administrative remedies for purposes of determining eligibility for an award of attorney's fees.

Effective date.—The provision applies to proceedings commenced after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

D. AWARD OF LITIGATION COSTS PERMITTED IN DECLARATORY JUDGMENT PROCEEDINGS (SEC. 13334 OF THE HOUSE BILL AND SEC. 12506 OF THE SENATE AMENDMENT)

Present law

Section 7430(b)(3) denies any reimbursement for attorney's fees in all declaratory judgment actions, except those actions related to the revocation of an organization's qualification under section 501(c)(3) (relating to tax-exempt status).

House bill

The House bill eliminates the present-law restrictions on awarding attorney's fees in all declaratory judgment proceedings.

Effective date.—The provision applies to proceedings commenced after the date of enactment.

Senate amendment

Same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

8. MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

A. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS (SEC. 13336 OF THE HOUSE BILL)

Present law

A taxpayer may sue the United States for up to $100,000 of damages caused by an officer or employee of the IRS who recklessly or intentionally disregards provisions of the Internal Revenue Code or the Treasury regulations promulgated thereunder in connection with the collection of Federal tax with respect to the taxpayer.

House bill

The House bill increases the cap from $100,000 to $1 million.

Effective date.—The provision applies to unauthorized collection actions by IRS employees that occur after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

B. COURT DISCRETION TO REDUCE AWARD FOR LITIGATION COSTS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES (SEC. 13337 OF THE HOUSE BILL AND SEC. 12507 OF THE SENATE AMENDMENT)

Present law

A taxpayer suing the United States for civil damages for unauthorized collection activities must exhaust administrative remedies to be eligible for an award.

House bill

The House bill permits (but does not require) a court to reduce an award if the taxpayer has not exhausted administrative remedies.

Effective date.—The provision is effective for proceedings commenced after the date of enactment.

Senate amendment

Same as the House bill.

Conference agreement

The conference agreement does not include the House bill provision and the Senate amendment.

9. MODIFICATION TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

A. PRELIMINARY NOTICE REQUIREMENT (SEC. 13341 OF THE HOUSE BILL)

Present law

Under section 6672, a "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis. An individual the IRS has identified as a responsible person is permitted an administrative appeal on the question of responsibility.

House bill

The House bill requires the IRS to issue a notice to an individual the IRS had determined to be a responsible person with respect to unpaid trust fund taxes at least 60 days prior to issuing a notice and demand for the penalty. The statute of limitations shall not expire before the date 90 days after the date on which the notice was mailed. The provision does not apply if the Secretary finds that the collection of the penalty is in jeopardy.

Effective date.—The provision applies to assessments made after June 30, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN ONE PERSON SUBJECT TO PENALTY (SEC. 13342 OF THE HOUSE BILL)

Present law

The IRS may not disclose to a responsible person the IRS's efforts to collect unpaid trust fund taxes from other responsible persons, who may also be liable for the same tax liability.

House bill

The House bill requires the IRS, if requested in writing by a person considered by the IRS to be a responsible person, to disclose in writing to that person the name of any other person the IRS has determined to be a responsible person with respect to the tax liability. The IRS is required to disclose in writing whether it has attempted to collect this penalty from other responsible persons, the general nature of those collection activities, and the amount (if any) collected. Failure by the IRS to follow this provision does not absolve any individual for any liability for this penalty.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

C. RIGHT OF CONTRIBUTION FROM MULTIPLE RESPONSIBLE PARTIES (SEC. 13343 OF THE HOUSE BILL)

Present law

A responsible person may seek to recover part of the amount which he has paid to the IRS from other individuals who also may have the obligations of a responsible person but who have not yet contributed their proportionate share of their liability under section 6672. Taxpayers must pursue such claims for contribution under state law (to the extent state law permits such claims). The variations in state law sometimes make it difficult or impossible to press successful suits in state courts to force a contribution from other responsible persons.

House bill

If more than one person is liable for this penalty, each person who paid the penalty is entitled to recover from other persons who are liable for the penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. This proceeding is a Federal cause of action and must be entirely separate from any proceeding involving IRS's collection of the penalty from any responsible party (including a proceeding in which the United States files a counterclaim or third-party complaint for collection of the penalty).

Effective date.—The provision applies to penalties assessed after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

D. BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS (SEC. 13344 OF THE HOUSE BILL)

Present law

Under section 6672, "responsible persons" of tax-exempt organizations are subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

House bill

The House bill clarifies that the section 6672 responsible person penalty is not to be imposed on volunteer, unpaid members of any board of trustees or directors of a tax-exempt organization to the extent such members are solely serving in an honorary capacity, do not participate in the day-to-day or financial activities of the organization, and do not have actual knowledge of the failure. The provision cannot operate in such a way as to eliminate all responsible persons from responsibility.

The House bill requires the IRS to develop materials to better inform board members of tax-exempt organizations (including voluntary or honorary members) that they may be treated as responsible persons. The IRS is required to make such materials routinely available to tax-exempt organizations. The House bill also requires the IRS to clarify its instructions to IRS employees on application of the responsible person penalty with regard to honorary or volunteer members of boards of trustees or directors of tax-exempt organizations.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

10. MODIFICATIONS OF RULES RELATING TO SUMMONSES

A. ENROLLED AGENTS INCLUDED AS THIRD-PARTY RECORDKEEPERS (SEC. 13346 OF THE HOUSE BILL AND SEC. 12508 OF THE SENATE AMENDMENT)

Present law

Section 7609 contains special procedures that the IRS must follow before it issues a third-party summons. A third-party summons is a summons issued to a third-party recordkeeper compelling him to provide information with respect to the taxpayer. An example of this would be a summons served on a stock brokerage house to provide data on the securities trading of the taxpayer-client.

If a third-party summons is served on a third-party recordkeeper listed in section 7609(a)(3), then the taxpayer must receive notice of the summons and have an opportunity to challenge the summons in court. Otherwise the taxpayer has no statutory right to receive notice of the summons and accordingly he will not have the opportunity to challenge it in court.

Section 7609(a)(3) lists attorneys and accountants as third-party recordkeepers, but it does not list "enrolled agents", who are authorized to practice before the IRS.

House bill

The House bill includes enrolled agents as third-party recordkeepers.

Effective date.—The provision applies to summonses issued after the date of enactment.

Senate amendment

Same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. SAFEGUARDS RELATING TO DESIGNATED SUMMONSES; ANNUAL REPORT TO CONGRESS ON DESIGNATED SUMMONSES (SECS. 13347–13348 OF THE HOUSE BILL AND SEC. 12509 OF THE SENATE AMENDMENT)

Present law

The period for assessment of additional tax with respect to most tax returns, corporate or otherwise, is three years. The IRS and the taxpayer can together agree to extend the period, either for a specified period of time or indefinitely. The taxpayer may terminate an indefinite agreement to extend the period by providing notice to the IRS.

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS seeks information by issuing an administrative summons. Such a summons will not be judicially enforced unless the Government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court. In addition, a taxpayer may petition the court to quash an administrative summons where this is permitted by statute.[26]

In certain cases, the running of the assessment period is suspended during the period when the parties are in court to obtain or avoid judicial enforcement of an administrative summons. Such a suspension is provided in the case of litigation over a third-party summons (sec. 7609(e)) or litigation over a summons regarding the examination of a related party transaction. Such a suspension can also occur with respect to a corporate tax return if a summons is issued at least 60 days before the day on which the assessment period (as extended) is scheduled to expire. In this case, suspension is only permitted if the summons clearly states that it is a "designated summons" for this purpose. Only one summons may be treated as a designated summons for purposes of any one tax return. The limitations period is suspended during the judicial enforcement period of the designated summons and of any other summons relating to the same tax return that is issued within 30 days after the designated summons is issued.

Under current internal procedures of the IRS, no designated summons is issued unless first reviewed by the Office of Chief Counsel to the IRS, including review by an IRS Deputy Regional Counsel for the Region in which the examination of the corporation's return is being conducted.

House bill

The House bill requires that issuance of any designated summons with respect to a corporation's tax return must be preceded by review of such issuance by the Regional Counsel, Office of Chief Counsel to the IRS, for the Region in which the examination of the corporation's return is being conducted.

[26] Petitions to quash are permitted, for example, in connection with the examination of certain related party transactions under section 6038A(e)(4), and in the case of certain third-party summonses under section 7609(b)(2).

The House bill also limits the use of a designated summons to corporations (or to any other person to whom the corporation has transferred records) that are being examined as part of the Coordinated Examination Program (CEP) or its successor. CEP audits cover about 1,600 of the largest corporate taxpayers. If a corporation moves between CEP and non-CEP audit categories, only the tax years covered by the CEP may be the subject of a designated summons. The House bill does not affect Code section 6038A(e)(1), which relates to a U.S. reporting corporation that acts merely as the agent of the foreign related party by receiving summonses on behalf of the foreign party.

The House bill also requires that the Treasury report annually to the Congress on the number of designated summonses issued in the preceding 12 months.

Effective date.—The provision applies to summonses issued after date of enactment.

Senate amendment

The Senate amendment is the same as the House bill with respect to limiting the use of a designated summons to certain corporations. The Senate amendment does not contain the provisions requiring the review of the Regional Counsel or the report.

Conference agreement

The conference agreement does not include the House bill provision and the Senate amendment.

11. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS (SEC. 13351 OF THE HOUSE BILL)

Present law

Under section 7805(b), Treasury may prescribe the extent (if any) to which regulations shall be applied without retroactive effect.

House bill

The House bill provides that temporary and proposed regulations must have an effective date no earlier than the date of publication in the Federal Register or the date on which any notice substantially describing the expected contents of such regulation is issued to the public. Any regulations filed or issued within 12 months of the enactment of the statutory provision to which the regulation relates may be issued with retroactive effect. This general prohibition on retroactive regulations may be superseded by a legislative grant authorizing the Treasury to prescribe the effective date with respect to a statutory provision. The Treasury may issue retroactive temporary or proposed regulations to prevent abuse. The Treasury also may issue retroactive temporary, proposed, or final regulations to correct a procedural defect in the issuance of a regulation. Taxpayers may elect to apply a temporary or proposed regulation retroactively from the date of publication of the regulation. Final regulations may take effect from the date of publication of the temporary or proposed regulation to which they relate. The provision does not apply to any regulation relating to internal

Treasury Department policies, practices, or procedures. Present law with respect to rulings is unchanged.

Effective date.—The provision applies with respect to regulations that relate to statutory provisions enacted on or after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

12. MISCELLANEOUS PROVISIONS

A. REPORT ON PILOT PROGRAM FOR APPEAL OF ENFORCEMENT ACTIONS (SEC. 13356 OF THE HOUSE BILL)

Present law

A taxpayer who disagrees with an IRS collection action generally can only appeal to successively higher levels of management in the Collection Division. However, certain cases involving the 6672 penalty, offers-in-compromise, and employment tax issues may be appealed to the Appeals Division.

House bill

The House bill requires the Secretary to report to the tax-writing committees on the effectiveness of the pilot program, together with any recommendations he may deem advisable.

Effective date.—The report is due by March 1, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. PHONE NUMBERS OF PERSON PROVIDING PAYEE STATEMENT REQUIRED TO BE SHOWN ON SUCH STATEMENT (SEC. 13357 OF THE HOUSE BILL)

Present law

Information returns must contain the name and address of the payor.

House bill

The House bill requires that information returns contain the name, address, and phone number of the information contact of the person required to make the information return. A payor may, for example, provide the phone number of the department with the relevant information. It is intended that the telephone number provide direct access to individuals with immediate resources to resolve a taxpayer's questions in an expeditious manner.

Effective date.—The provision applies to statements required to be furnished after December 31, 1996 (determined without regard to any extension).

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

C. REQUIRED NOTICE TO TAXPAYERS OF CERTAIN PAYMENTS (SEC. 13358 OF THE HOUSE BILL)

Present law

If the IRS receives a payment without sufficient information to properly credit it to a taxpayer's account, the IRS may attempt to contact the taxpayer. If contact cannot be made, the IRS places the payment in an unidentified remittance file.

House bill

The House bill requires the IRS to make reasonable efforts to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with the taxpayer.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

D. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE (SEC. 13359 OF THE HOUSE BILL)

Present law

No statutory disincentive applies to IRS employees who entice a tax professional to disclose information about clients in exchange for the favorable treatment of the taxes of the professional.

House bill

If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, the taxpayer may bring a civil action for damages against the United States in a district court of the United States. Upon a finding of liability, damages shall equal the lesser of $500,000 or the sum of (1) actual economic damages sustained by the taxpayer as a proximate result of the information disclosure and (2) the costs of the action. These remedies shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.

Effective date.—The provision applies to actions taken after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

E. ANNUAL REMINDERS TO TAXPAYERS WITH OUTSTANDING DELINQUENT ACCOUNTS (SEC. 13360 OF THE HOUSE BILL AND SEC. 12510 OF THE SENATE AMENDMENT)

Present law

There is no statutory requirement in the Code that the IRS send annual reminders to persons who have outstanding tax liabilities.

House bill

The House bill requires the IRS to send taxpayers an annual reminder of their outstanding tax liabilities. The fact that a taxpayer did not receive a timely, annual reminder notice does not affect the tax liability.

Effective date.—The provision requires the IRS to send annual reminder notices beginning in 1996.

Senate amendment

Same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

F. FIVE-YEAR EXTENSION OF AUTHORITY FOR UNDERCOVER OPERATIONS (SEC. 13361 OF THE HOUSE BILL)

Present law

The Anti-Drug Abuse Act of 1988 exempted IRS undercover operations from the otherwise applicable statutory restrictions controlling the use of Government funds (which generally provide that all receipts be deposited in the general fund of the Treasury and all expenses be paid out of appropriated funds). In general, the exemption permits the IRS to "churn" the income earned by an undercover operation to pay additional expenses incurred in the undercover operation. The IRS is required to conduct a detailed financial audit of large undercover operations in which the IRS is churning funds and to provide an annual audit report to the Congress on all such large undercover operations. The exemption originally expired on December 31, 1989, and was extended by the Comprehensive Crime Control Act of 1990 to December 31, 1991. The IRS has not had the authority to churn funds from its undercover operations since 1991.

House bill

The House bill reinstates the IRS's offset authority under section 7608(c) from the date of enactment until January 1, 2001. The House bill amends the IRS annual reporting requirement under section 7608(c)(4)(B) to require the provision of the following data: (1) the date the operation was initiated; (2) the date offsetting was approved; (3) the total current expenditures and the amount and use of proceeds of the operation; (4) a detailed description of the undercover operation projected to generate proceeds, including the potential violation being investigated, and whether the operation is being conducted under grand jury auspices; and (5) the results of the operation to date, including the results of criminal proceedings.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

G. DISCLOSURE OF RETURNS ON CASH TRANSACTIONS (SEC. 13362 OF THE HOUSE BILL)

Present law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Under section 6050I, any person who receives more than $10,000 in cash in one transaction (or two or more related transactions) in the course of a trade or business generally must file an information return (Form 8300) with the IRS specifying the name, address, and taxpayer identification number of the person from whom the cash was received and the amount of cash received.

The Anti-Drug Abuse Act of 1988 provided a special rule permitting the IRS to disclose these information returns to other Federal agencies for the purpose of administering Federal criminal statutes. The special rule originally was to expire after November 18, 1990, and was extended by the Comprehensive Crime Control Act of 1990 to November 18, 1992.

House bill

The House bill permanently extends the special rule for disclosing Form 8300 information. Moreover, the House bill permits disclosures not only to Federal agencies but also to State, local and foreign agencies and for civil, criminal and regulatory purposes (i.e., generally in the same manner as Currency Transaction Reports filed by financial institutions under the Bank Secrecy Act.) Disclosure, however, is not permitted to any such agency for purposes of tax administration. The House bill also (1) extends the dissemination policies and guidelines under section 6103 to people having access to Form 8300 information, and (2) applies section 6103 sanctions to persons having access to Form 8300 information that disclose this information without proper authorization.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

H. DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER (SEC. 13363 OF THE HOUSE BILL)

Present law

Under present law, the IRS is authorized to disclose the return of any taxpayer, or return information pertaining to a taxpayer, to such person(s) as the taxpayer has designated in a written request.

House bill

The House bill deletes the word "written" from the requirement that "written consent" from the taxpayer is necessary for the disclosure of taxpayer information to a designated third party. Allowing the IRS to adopt alternatives to the written request requirement will expedite such changes and facilitate the development and implementation of Tax System Modernization projects. It is anticipated that the IRS will continue to utilize its regulatory authority to impose reasonable restrictions on the form in which a request is made, and that the IRS will in no event accept an unconfirmed verbal request.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

I. REPORT ON NETTING OF INTEREST ON OVERPAYMENTS AND LIABILITIES (SEC. 13364 OF THE HOUSE BILL)

Present law

If any portion of a tax is satisfied through the crediting of an overpayment of tax, no interest is imposed on that portion of the tax for any period during which, if the credit had not been made, interest would have been allowable.

House bill

The House bill requires the Secretary of the Treasury to conduct a study of the manner in which the IRS has implemented the netting of interest on overpayments and underpayments and the policy and administrative implications of global netting. The Treasury is required to hold a public hearing to receive comments from any interested party prior to submitting the report of its study to the tax writing committees.

Effective date.—The report is due six months after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

J. TAX CREDIT FOR CERTAIN EXPENSES INCURRED IN CONNECTION WITH TCMP AUDITS (SEC. 13365 OF THE HOUSE BILL)

Present law

The IRS recently announced that it will not conduct taxpayer compliance measurement program (TCMP) audits of returns filed for taxable year 1994. (The IRS had previously announced it would soon begin these audits.) The IRS planned to audit a stratified random sample consisting of approximately 150,000 returns. The data collected in TCMP audits would have been used by the IRS for several purposes: measuring the level of compliance with federal tax laws; estimating the tax gap; developing criteria for objectively selecting returns for audit; allocating the IRS's audit resources; analyzing specific compliance issues; and developing legislative proposals designed to improve taxpayer compliance.

Under present law, any expenses a taxpayer incurs in connection with the determination, collection or refund of any tax are deductible under either section 162 or sections 212(3). However, there is no tax credit for expenses incurred in connection with TCMP audits.

House bill

The House bill provides a refundable tax credit to individuals (not including estates, trusts, partnerships, or S corporations) for up to $3,000 of expenses otherwise deductible under either section 162 or section 212(3) incurred in connection with a TCMP audit of the taxpayer for taxable year 1994. In some circumstances, such as where a taxpayer has a net operating loss carryback, adjustments may also be made to an earlier tax return of the taxpayer as a consequence of the TCMP audit of the taxpayer for taxable year 1994. Expenses incurred with respect to this type of adjustment on an earlier return would also be eligible for the credit, because they are incurred in connection with the TCMP audit of the taxpayer for taxable year 1994. The $3,000 credit is the total available with respect to an audit, regardless of whether the expenses are incurred in two (or more) years. The credit is in lieu of a deduction with respect to these expenses.

Effective date.—The provision is effective with respect to amounts paid or incurred after December 31, 1994, in taxable years ending after that date. The credit is allowable with respect to the taxable year in which the expenses are incurred.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

K. EXPENSES OF DETECTION OF UNDERPAYMENTS AND FRAUD (SEC. 13366 OF THE HOUSE BILL)

Present law

The Secretary may, pursuant to regulations, pay rewards for information leading to the detection and punishment of violations of the Internal Revenue laws.

House bill

The House bill clarifies that rewards may be paid for information relating to civil violations, as well as criminal violations. The House bill also provides that the rewards are to be paid out of the proceeds of amounts (other than interest) collected by reason of the information provided. The House bill also requires an annual report on the rewards program.

Effective date.—The provision is effective six months after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

VII. CASUALTY, NONRECOGNITION, AND INVOLUNTARY CONVERSION PROVISIONS

A. MODIFY BASIS ADJUSTMENT RULES UNDER SECTION 1033 (SEC. 13626 OF THE HOUSE BILL AND SEC. 12601 OF THE SENATE AMENDMENT)

Present law

Under section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within a specified replacement period of time. The replacement property may be acquired directly or by acquiring control of a corporation (generally, 80 percent of the stock of the corporation) that owns replacement property. The taxpayer's basis in the replacement property generally is the same as the taxpayer's basis in the converted property, decreased by the amount of any money or loss recognized on the conversion, and increased by the amount of any gain recognized on the conversion. In cases in which a taxpayer purchases stock as replacement property, the taxpayer generally reduces the basis of the stock, but does not reduce the basis of the underlying assets. Thus, the reduction in the basis of the stock generally does not result in reduced depreciation deductions where the corporation holds depreciable property, and may result in the taxpayer having more aggregate depreciable basis after the acquisition of replacement property than before the involuntary conversion.

House bill

The House bill provides that where the taxpayer satisfies the replacement property requirement of section 1033 by acquiring stock in a corporation, the corporation generally will reduce its adjusted bases in its assets by the amount by which the taxpayer reduces its basis in the stock. The corporation's adjusted bases in its assets will not be reduced, in the aggregate, below the taxpayer's basis in its stock (determined after the appropriate basis adjustment for the stock). In addition, the basis of any individual asset will not be reduced below zero. The basis reduction first is applied to: (1) property that is similar or related in service or use to the converted property, then (2) to other depreciable property, then (3) to other property.

Effective date.—The provision applies to involuntary conversions occurring after September 13, 1995.

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. MODIFY THE EXCEPTION TO THE RELATED PARTY RULE OF SECTION 1033 FOR INDIVIDUALS TO ONLY PROVIDE AN EXCEPTION FOR DE MINIMIS AMOUNTS (SEC. 13627 OF THE HOUSE BILL AND SEC. 12602 OF THE SENATE AMENDMENT)

Present law

Under section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within a specified replacement period of time. Pursuant to a provision of H.R. 831, as passed by the Congress and signed by the President on April 11, 1995 (P.L. 104–7), subchapter C corporations (and certain partnerships with corporate partners) are not entitled to defer gain under section 1033 if the replacement property or stock is purchased from a related person.

House bill

The House bill expands the present-law denial of the application of section 1033 to any other taxpayer (including an individual) that acquires replacement property from a related party (as defined by secs. 267(b) and 707(b)(1)) unless the taxpayer has aggregate realized gain of $100,000 or less for the taxable year with respect to converted property with aggregate realized gains. In the case of a partnership (or S corporation), the annual $100,000 limitation applies to both the partnership (or S corporation) and each partner (or shareholder).

Effective date.—The provision applies to involuntary conversions occurring after September 13, 1995.

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.

C. TREATMENT OF CERTAIN CROP INSURANCE PROCEEDS AND DISASTER ASSISTANCE PAYMENTS (SEC. 14555 OF THE HOUSE BILL AND SEC. 12603 OF THE SENATE AMENDMENT)

Present law

A taxpayer engaged in a farming business generally may use the cash receipts and disbursements method of accounting ("cash method") to report taxable income. A cash method taxpayer generally recognizes income in the taxable year in which cash is received, regardless of when the economic events that give rise to such income occur. Under a special rule (sec. 451(d)), in the case of insurance proceeds received as a result of destruction or damage to crops, a cash method taxpayer may elect to defer the income recognition of the proceeds until the taxable year following the year of the destruction or damage, if the taxpayer establishes that under his practice, income from such crops would have been reported in a following taxable year.

House bill

The House bill amends the special rule of section 451(d) to allow a cash method taxpayer to elect to accelerate (or defer) the recognition of certain disaster-related payments if the taxpayer establishes that, under the taxpayer's practice, income from the crops lost in the disaster would have been reported in a prior (or the subsequent) taxable year. These elections are available with respect to payments of: (1) insurance proceeds received on account of destruction or damage to crops, or (2) disaster assistance received under any Federal law as a result of destruction or damage to crops caused by drought, flood, or other natural disaster, or the inability to plant crops because of such a disaster. A taxpayer is not allowed to accelerate the recognition of a disaster-related payment if the taxable year to which the taxpayer could properly accelerate such income under the bill is closed by the statute of limitations.

Effective date.—The provision is effective for payments received after December 31, 1995, as a result of destruction or damage occurring after such date.

Senate amendment

The Senate amendment is the same as the House bill, but with a different effective date.

Effective date.—The provision is effective for payments received after December 31, 1992, as a result of destruction or damage occurring after such date.

Conference agreement

The conference agreement follows the Senate amendment.

D. APPLICATION OF INVOLUNTARY CONVERSION RULES TO PROPERTY DAMAGED AS A RESULT OF PRESIDENTIALLY DECLARED DISASTERS (SEC. 12604 OF THE SENATE AMENDMENT)

Present law

A taxpayer may elect not to recognize gain with respect to property that is involuntarily converted if the taxpayer acquires within an applicable period property similar or related in service or use. If the taxpayer does not replace the converted property with property similar or related in service or use, then gain generally is recognized.

House bill

No provision.

Senate amendment

The Senate amendment provides that any tangible property acquired and held for productive use in a business is treated as similar or related in service or use to property that (1) was held for investment or for productive use in a business and (2) was involuntarily converted as a result of a Presidentially declared disaster.

Effective date.—The provision is effective for disasters for which a Presidential declaration is made after December 31, 1994, in taxable years ending after that date.

Conference agreement

The conference agreement follows the Senate amendment.

E. DISALLOW ROLLOVER UNDER SECTION 1034 TO EXTENT OF PREVIOUSLY CLAIMED DEPRECIATION FOR HOME OFFICE OR OTHER DEPRECIABLE USE OF RESIDENCE (SEC. 13628 OF THE HOUSE BILL AND SEC. 12821 OF THE SENATE AMENDMENT)

Present law

Rollover

Generally, no gain is recognized on the sale or exchange of a principal residence to the extent that the amount of the sales price of the old residence is reinvested in a new residence within a specified period. The specified period generally is a period beginning two years before the sale of the old residence and ending two years after the sale of the old residence.

One-time exclusion

In general, a taxpayer may exclude from gross income up to $125,000 of gain from the sale or exchange of a principal residence if the taxpayer (1) has attained age 55 before the sale, and (2) has used the residence as a principal residence for three or more years of the five years preceding the sale. This election is allowed only once in a lifetime unless all previous elections are revoked. For these purposes, sales on or before July 26, 1978, are not counted against the once-in-a-lifetime limit.

In the case of a mixed use of a residence, the exclusion is limited to that portion of the residence that is owned and used by the individual as his principal residence for at least three of the previous five years before the date of sale. Gain on the portion not qualifying as a principal residence is not eligible for this exclusion.

House bill

Rollover

The House bill provides that gain is recognized on the sale of a principal residence to the extent of any depreciation allowable with respect to such principal residence for periods after December 31, 1995.

One-time exclusion

The House bill imposes an additional restriction on the availability of the one-time exclusion. Specifically, the bill provides that the amount of the otherwise allowable one-time exclusion is reduced to the extent of depreciation allowable with respect to such principal residence for periods after December 31, 1995. To illustrate the bill, assume the following facts: a 60-year old never-married taxpayer purchased a building on January 1, 1995, for $100,000 which will be used as the taxpayer's principal residence until its sale on January 1, 2002. Further, assume that the taxpayer will use one-tenth of the building as a qualified home office for three years between January 1, 1996, and December 31, 1998, with allowable annual depreciation of $256. Finally, assume that the taxpayer sells the building for $150,000 on January 1, 2002, and does not acquire a replacement residence. The taxpayer's realized gain is $50,768 ($150,000–($100,000–$768)). Under the bill $50,000 ($50,768–$768) is eligible for the one-time exclusion. The taxpayer is subject to tax on $768.

Effective date.—Taxable years ending after December 31, 1995.

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.

F. PROVIDE THAT ROLLOVER OF GAIN ON SALE OF A PRINCIPAL RESIDENCE CANNOT BE ELECTED BY A RESIDENT ALIEN UNLESS THE REPLACEMENT PROPERTY PURCHASED IS LOCATED WITHIN THE UNITED STATES (SEC. 13629 OF THE HOUSE BILL AND SEC. 12822 OF THE SENATE AMENDMENT)

Present law

Generally, no gain is recognized on the sale or exchange of a principal residence to the extent that the amount of the sales price of the old residence is reinvested in a new residence within a specified period. The specified period generally is a period beginning two years before the sale of the old residence and ending two years after the sale of the old residence. There is no requirement that either the old residence or new residence be located within the United States or its possessions.

House bill

Generally, the House bill requires recognition of gain on the sale or exchange of a principal residence by a resident alien unless the resident alien (1) retains resident alien status for at least two years after the date of sale, (2) becomes a U.S. citizen within two years of the date of sale, or (3) acquires a replacement residence located in the U.S. or its possessions within the specified time period.

The House bill does not apply where (1) the old residence is held jointly by the resident alien and the resident alien's spouse, (2) they file a joint tax return, and (3) the spouse is a U.S. citizen on the date of sale of the old residence.

Effective date.—Applies to the sale of old residences after December 31, 1995, unless a replacement residence was purchased before September 13, 1995, or purchased on or after such date pursuant to a binding contract in effect on such date (and at all times thereafter before such purchase).

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.

VIII. EXEMPT ORGANIZATIONS AND CHARITABLE PROVISIONS

A. INTERMEDIATE SANCTIONS FOR CERTAIN TAX-EXEMPT ORGANIZATIONS (SECS. 13646–13651 OF THE HOUSE BILL)

Present law

Private inurement

Charities.—Section 501(c)(3) specifically conditions tax-exempt status for all organizations described in that section on the requirement that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual (the so-called "private inurement test").

Social welfare organizations.—A tax-exempt social welfare organization described in section 501(c)(4) must be organized on a non-profit basis and must be operated exclusively for the promotion of social welfare. In contrast to section 501(c)(3), however, there is no specific statutory rule in section 501(c)(4) prohibiting the net earnings of a social welfare organization described in section 501(c)(4) from inuring to the benefit of a private shareholder or individual.[27]

Other organizations.—Other tax-exempt organizations, such as labor and agricultural organizations described in section 501(c)(5) and business leagues described in section 501(c)(6) are subject to the private inurement test, as a result of explicit statutory language or Treasury Department regulations.

Sanctions for private inurement and other violations of exemption standards

Organizations described in section 501(c)(3) are classified as either public charities or private foundations. Penalty excise taxes may be imposed under the Code when a public charity makes political expenditures (sec. 4955) or excessive lobbying expenditures (secs. 4911 and 4912). However, the Code generally does not provide for the imposition of penalty excise taxes in cases where a 501(c)(3) public charity or a section 501(c)(4) social welfare organization engages in a transaction that results in private inurement. In such cases, the only sanction that specifically is authorized under the Code is revocation of the organization's tax-exempt status. A transaction engaged in by a private foundation (but not a public charity) is subject to special penalty excise taxes under the Code if the transaction is a prohibited "self-dealing" transaction (sec. 4941) or does not accomplish a charitable purpose (sec. 4945).

Filing and public disclosure rules

Tax-exempt organizations (other than churches and certain small organizations) are required to file an annual information return (Form 990) with the IRS, setting forth the organization's items of gross income and expenses attributable to such income, disbursements for tax-exempt purposes, plus certain other information for the taxable year. Private foundations are required to allow public inspection at the foundation's principal office of their current annual information return. Other tax-exempt organizations, including public charities, are required to allow public inspection at the organization's principal office (and certain regional or district offices) of their annual information returns for the three most recent taxable years (sec. 6104(e)). The Code also requires that tax-exempt organizations allow public inspection of the organization's application to the IRS for recognition of tax-exempt status, the IRS determination letter, and certain related documents. In addition, upon written request to the IRS, members of the general public are permitted to inspect annual information returns of tax-exempt organizations and applications for recognition of tax-exempt status (and

[27] Even where no prohibited private inurement exists, however, more than incidental private benefits conferred on individuals may result in the organization not being operated "exclusively" for an exempt purpose. See, e.g., *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989).

related documents) at the National Office of the IRS in Washington, D.C. A person making such a written request is notified by the IRS when the material is available for inspection at the National Office, where notes may be taken of the material open for inspection, photographs taken with the person's own equipment, or copies of such material obtained from the IRS for a fee (Treas. Reg. secs. 301.6104(a)–6 and 301.6104(b)–1).

Section 6652(c)(1)(A) provides that a tax-exempt organization that fails to file a complete and accurate Form 990 is subject to a penalty of $10 for each day during which such failure continues (with a maximum penalty with respect to any one return of the lesser of $5,000 or five percent of the organization's gross receipts for the year). Section 6652(c)(1)(C) provides that tax-exempt organizations that fail to make certain annual returns and applications for exemption available for public inspection are subject to a penalty of $10 for each day the failure continues (with a maximum penalty with respect to any one return not to exceed $5,000, and without limitation with respect to applications). In addition, section 6685 provides a penalty for willfully failing to make an annual return or application available for public inspection of $1,000 per return or application.

Organizations that have tax-exempt status but that are not eligible to receive tax-deductible charitable contributions are required expressly to state in certain fundraising solicitations that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes (sec. 6113). Penalties may be imposed on such organizations for failure to comply with this requirement (sec. 6710).

House bill

Extend private inurement prohibition to social welfare organizations

The House bill amends section 501(c)(4) explicitly to provide that a social welfare organization or other organization described in that section would be eligible for tax-exempt status only if no part of its net earnings inures to the benefit of any private shareholder or individual.

Effective date.—This provision generally would be effective on September 14, 1995. However, under a special transition rule, the provision does not apply to inurement occurring prior to January 1, 1997, if such inurement results from a written contract that was binding on September 13, 1995, and at all times thereafter before such inurement occurred, and the terms of which have not materially changed.

Intermediate sanctions for excess benefit transactions

The House bill imposes penalty excise taxes as an intermediate sanction in cases where organizations exempt from tax under section 501(c)(3) or 501(c)(4) (other than private foundations, which are subject to a separate penalty regime under current law) engage in an "excess benefit transaction." In such cases, intermediate sanctions can be imposed on certain disqualified persons (i.e., insiders) who improperly benefit from an excess benefit transaction and on organization managers who participate in such a transaction knowing that it is improper.

An "excess benefit transaction" is defined as: (1) any transaction in which an economic benefit is provided to, or for the use of, any disqualified person if the value of the economic benefit provided directly by the organization (or indirectly through a controlled entity[28]) to such person exceeds the value of consideration (including performance of services) received by the organization for providing such benefit; and (2) to the extent provided in Treasury Department regulations, any transaction in which the amount of any economic benefit provided to, or for the use of, any disqualified person is determined in whole or in part by the revenues of the organization, provided that the transaction constitutes prohibited inurement under present-law section 501(c)(3) or under section 501(c)(4), as amended. Thus, "excess benefit transactions" subject to excise taxes include transactions in which a disqualified person engages in a non-fair-market-value transaction with an organization or receives unreasonable compensation, as well as financial arrangements (to the extent provided in Treasury regulations) under which a disqualified person receives payment based on the organization's income in a transaction that violates the present-law private inurement prohibition. The Committee intends that the Treasury Department will issue prompt guidance providing examples of revenue-sharing arrangements that violate the private inurement prohibition.

Existing tax-law standards apply in determining reasonableness of compensation and fair market value. Consistent with such standards, the parties to a transaction would be entitled to rely on a rebuttable presumption of reasonableness with respect to a compensation arrangement with a disqualified person if such arrangement was approved by an independent board (or an independent committee authorized by the board) that: (1) was composed entirely of individuals unrelated to and not subject to the control of the disqualified person(s) involved in the arrangement; (2) obtained and relied upon appropriate data as to comparability (e.g., compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the location of the organization, including the availability of similar specialties in the geographic area; independent compensation surveys by nationally recognized independent firms; or actual written offers from similar institutions competing for the services of the disqualified person); and (3) adequately documented the basis for its determination (e.g., the record includes an evaluation of the individual whose compensation was being established and the basis for determining that the individual's compensation was reasonable in light of that evaluation and data).[29] If these three criteria are satisfied, penalty

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[28] A tax-exempt organization cannot avoid the private inurement proscription by causing a controlled entity to engage in an excess benefit transaction. Thus, for example, if a tax-exempt organization causes its taxable subsidiary to pay excessive compensation to an individual who is a disqualified person with respect to the parent organization, such transaction would be an excess benefit transaction.

[29] The fact that a State or local legislative or agency body may have authorized or approved of a particular compensation package paid to a disqualified person is not determinative of the reasonableness of compensation paid for purposes of the excise tax penalties provided for by the proposal. Similarly, such authorization or approval is not determinative of whether a revenue sharing arrangement violates the private inurement proscription.

excise taxes could be imposed under the bill only if the IRS develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction (e.g., the IRS could establish that the compensation data relied upon by the parties was not for functionally comparable positions or that the disqualified person, in fact, did not substantially perform the responsibilities of such position). A similar rebuttable presumption would arise with respect to the reasonableness of the valuation of property sold or otherwise transferred (or purchased) by an organization to (or from) a disqualified person if the sale or transfer (or purchase) is approved by an independent board that uses appropriate comparability data and adequately documents its determination.

The House bill specifically provides that the payment of personal expenses and benefits to or for the benefit of disqualified persons, and non-fair-market-value transactions benefiting such persons, would be treated as compensation only if it is clear that the organization intended and made the payments as compensation for services. In determining whether such payments or transactions are, in fact, compensation, the relevant factors would include whether the appropriate decision-making body approved the transfer as compensation in accordance with established procedures and whether the organization and the recipient reported the transfer (except in the case of non-taxable fringe benefits) as compensation on the relevant forms (i.e., the organization's Form 990, the Form W–2 provided by the organization to the recipient, the recipient's Form 1040, and other required returns).[30]

"Disqualified person" means any person who is (1) an "organization manager" (meaning any officer, director, or trustee of an organization or any individual having powers or responsibilities similar to those of officers, directors, or trustees) or (2) any individual (other than an organization manager) who is in a position to exercise substantial influence over the affairs of the organization.[31] In addition, "disqualified persons" include certain family members and 35-percent owned entities[32] of any person described in (1) or (2) above, as well as any person who was a disqualified person at any time during the five-year period prior to the transaction at issue.

A disqualified person who benefits from an excess benefit transaction would be subject to a first-tier penalty tax equal to 25 percent of the amount of the excess benefit (i.e., the amount by which a transaction differs from fair market value, the amount of compensation exceeding reasonable compensation, or the amount of

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[30] With the exception of nontaxable fringe benefits described in present-law section 132 and other types of nontaxable transfers such as employer-provided health benefits and contributions to qualified pension plans, an organization cannot demonstrate at the time of an IRS audit that it clearly indicated its intent to treat economic benefits provided to a disqualified person as compensation for services merely by claiming that such benefits may be viewed as part of the disqualified person's total compensation package. Rather, the organization must provide substantiation that is contemporaneous with the transfer of economic benefits at issue.

[31] The Committee intends that a person could be in a position to exercise substantial influence over a tax-exempt organization despite the fact that such person is not an employee of (and receives no compensation directly from) a tax-exempt organization but is formally an employee of (and is directly compensated by) a subsidiary—even a taxable subsidiary—controlled by the parent tax-exempt organization.

[32] Family members are determined under present-law section 4946(d), except that such members also would include siblings (whether by whole or half blood) of the individual, and spouses of such siblings. "35-percent owned entities" mean corporations, partnerships, and trusts or estates in which a disqualified person owns more than 35 percent of the combined voting power, profits interest, or beneficial interest.

a prohibited transaction based on the organization's gross or net income). Organization managers who participate in an excess benefit transaction knowing that it is an improper transaction would be subject to a first-tier penalty tax of ten percent of the amount of the excess benefit (subject to a maximum penalty of $10,000).

Additional, second-tier taxes could be imposed on a disqualified person if there is no correction of the excess benefit transaction within a specified time period.[33] In such cases, the disqualified person would be subject to a penalty tax equal to 200 percent of the amount of excess benefit. For this purpose, the term "correction" means undoing the excess benefit to the extent possible and, where fully undoing the excess benefit is not possible, taking such additional corrective action as is prescribed by Treasury regulations.

The intermediate sanctions for "excess benefit transactions" could be imposed by the IRS in lieu of (or in addition to) revocation of an organization's tax-exempt status. If more than one disqualified person or manager is liable for a penalty excise tax, then all such persons would be jointly and severally liable for such tax. As under current law, a three-year statute of limitations applies, except in the case of fraud (sec. 6501). Under the House bill, the IRS has authority to abate the excise tax penalty (under present-law section 4962) if it is established that the violation was due to reasonable cause and not due to willful neglect and the transaction at issue was corrected within the specified period.

To prevent an organization from avoiding the penalty excise taxes through termination of its tax-exempt status, the House bill also imposes a tax on tax-exempt organizations that terminate their tax-exempt status. The amount of the tax equals the lesser of (1) the aggregate tax benefits that an organization can substantiate that it has received from its exemption from tax under Code section 501(a), or (2) the value of the net assets of such organization.[34] The Secretary of the Treasury is permitted to abate all or a portion of the tax if a tax-exempt organization distributes all of its net assets to one or more charitable organizations described in Code section 501(c)(3) that have been in existence for a continuous five-year period. Tax-exempt organizations that are described in Code section 501(c)(4) are permitted to distribute their net assets to one or more organizations described in Code section 501(c)(3) or 501(c)(4) that have been in existence for a continuous five-year period. An organization is permitted to terminate its exempt status only if it has paid the tax (or any portion thereof that is not abated) and the organization has notified the Secretary of its intent to terminate its exempt status (or the Secretary has made a final determination that such status has terminated).

Effective date.—The provision generally applies to excess benefit transactions occurring on or after September 14, 1995. The provision does not apply, however, to any transaction pursuant to a written contract for the performance of personal services which was binding on September 13, 1995, and at all times thereafter before

[33] Correction must be made on or prior to the earlier of (1) the date of mailing of a notice of deficiency under section 6212 with respect to the first-tier penalty excise tax imposed on the disqualified person, or (2) the date on which such tax is assessed.

[34] In calculating these amounts, rules similar to the rules applicable to private foundations set forth in Code section 507(d),(e), and (f) apply.

such transaction occurred, and the terms of which have not materially changed.

Additional filing and public disclosure rules

Reporting of identity of certain disqualified persons, excise tax penalties and excess benefit transactions.—Tax-exempt organizations are required to disclose on their Form 990 the names of each disqualified person who received an economic benefit during the taxable year and such other information as may be required by the Secretary of the Treasury. In addition, exempt organizations are required to disclose on their Form 990 such information as the Secretary of the Treasury may require with respect to "excess benefit transactions" (described above) and any other excise tax penalties paid during the year under present-law sections 4911 (excess lobbying expenditures), 4912 (disqualifying lobbying expenditures), or 4955 (political expenditures), including the amount of the excise tax penalties paid with respect to such transactions, the nature of the activity, and the parties involved.[35]

Furnishing copies of documents.—The House bill also provides that a tax-exempt organization that is subject to the public inspection rules of present-law section 6104(e)(1) (i.e., any tax-exempt organization, other than a private foundation, that files a Form 990) is required to comply with requests from individuals who seek a copy of the organization's Form 990 or the organization's application for recognition of tax-exempt status and certain related documents. Upon such a request, the organization is required to supply copies without charge other than a reasonable fee for reproduction and mailing costs. If so requested, copies must be supplied of the Forms 990 for any of the organization's three most recent taxable years. If the request for copies is made in person, then the organization must immediately provide such copies. If the request for copies is made other than in person (e.g., by mail or telephone), then copies must be provided within 30 days. However, an organization could be relieved, for a limited period of time, of its obligation to provide copies if the Secretary of the Treasury determined, upon application by the organization, that the organization was subject to a harassment campaign such that waiver of the obligation to provide copies would be in the public interest.

Advertisements and solicitations.—The House bill further requires that written advertisements or solicitations made by (or on behalf of) a tax-exempt organization that is subject to the public inspection rules of present-law section 6104(e)(1) must contain an express statement, in a conspicuous and easily recognizable format, that the organization's Forms 990 are available to individuals upon request.[36] Failure to make the required disclosure in an advertisement or solicitation would subject the organization to a penalty of $100 for each day on which the failure occurred. However, no pen-

[35] The penalties applicable to failure to file a timely, complete, and accurate return apply for failure to comply with these requirements. In addition, it is intended that the IRS implement its plan to require additional Form 990 reporting regarding (1) changes to the governing board or the certified accounting firm, (2) such information as the Secretary may require relating to professional fundraising fees paid by the organization, and (3) aggregate payments (by related entities) in excess of $100,000 to the highest-paid employees.

[36] It is intended that the Department of Treasury will provide prompt guidance on this requirement.

alty may be imposed with respect to a failure if it is shown that such failure was due to reasonable cause. The House bill generally limits the maximum penalty to $10,000 for all such failures by an organization during any calendar year.[37]

In addition, the House bill requires entities that do not have Federal tax-exempt status but that describe themselves in advertisements or solicitations as "nonprofit" to disclose in an express statement that contributions to the entity are not deductible as charitable contributions for Federal income tax purposes. Failure to make the disclosure would subject the entity to penalties under section 6716.

Electronic dissemination of information.—The House bill requires the Treasury Department to provide copies of annual returns and applications for recognition of tax-exempt status filed by exempt organizations to any organization that agrees to accept broad categories of such returns and applications and to provide electronic access to *all* such documents on an electronic network to the general public. Such returns and applications must be provided free of charge to organizations that do not charge a fee for public access; if an organization charges a fee for public electronic access, the Treasury Department is allowed to charge a reasonable fee for reproduction and mailing costs.

Penalties for failure to file timely or complete return.—The section 6652(c)(1)(A) penalty imposed on a tax-exempt organization that either fails to file a Form 990 in a timely manner or fails to include all required information on a Form 990 is increased from the present-law level of $10 for each day the failure continues (with a maximum penalty with respect to any one return of the lesser of $5,000 or five percent of the organization's gross receipts) to $20 for each day the failure continues (with a maximum penalty with respect to any one return of the lesser of $10,000 or five percent of the organization's gross receipts). Under the House bill, organizations with annual gross receipts exceeding $1 million are subject to a penalty under section 6652(c)(1)(A) of $100 for each day the failure continues (with a maximum penalty with respect to any one return of $50,000). As under present law, no penalty may be imposed under section 6652(c)(1)(A) if it were shown that the failure to file a complete return was due to reasonable cause (sec. 6652(c)(3)).

Penalties for failure to allow public inspection.—The section 6652(c)(1)(C) penalty imposed on tax-exempt organizations that fail to allow public inspection of certain annual returns or applications for exemption is increased from the present-law level of $10 per day (with a maximum of $5,000) to $20 per day (with a maximum of $10,000). In addition, the section 6685 penalty for willful failure to allow public inspections is increased from the present-law level of $1,000 to $5,000.

Treasury Department studies.—The House bill directs the Treasury Department to: (1) study and make recommendations re-

[37] However, if a failure to comply with the disclosure requirement for solicitations is due to intentional disregard, then the $10,000 limitation does not apply, and the penalty for each day on which such an intentional failure occurred is the greater of (1) $1,000 or (2) 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was intentional disregard of the disclosure requirement.

garding application of an explicit statutory private inurement prohibition, and intermediate sanctions, to other tax-exempt organizations; (2) study and make recommendations to the Congress on whether certain State officers, such as the attorney general and other officials charged with overseeing public charities, should be provided with additional access to Federal tax information beyond that authorized under section 6103; and (3) review the Form 990 reporting requirements to ensure the Form's utility to IRS and the public and to reduce unnecessary reporting burdens.

Effective dates.—The filing and disclosure provisions governing tax-exempt organizations generally take effect on January 1, 1996 (or, if later, 90 days after enactment). However, the provisions regarding the reporting on annual returns of excise tax penalties and excess benefit transactions is effective for returns with respect to taxable years beginning on or after January 1, 1995. The requirement that the Treasury Department provide copies of annual returns and applications for recognition of tax-exempt status for electronic dissemination applies to returns and applications filed on or after January 1, 1996; it applies to returns and applications filed prior to January 1, 1996, only to the extent provided by the Secretary of the Treasury. The Treasury Department studies are required to be transmitted to Congress by January 1, 1997.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, modified as set forth below.

Extend private inurement prohibition to social welfare organizations

The conference agreement codifies the provision in the committee report to the House bill providing that the private inurement rule will not be violated solely because of an allocation or return of net margins or capital to the members of a nonprofit association or organization that operates on a cooperative basis in accordance with its incorporating statute and bylaws (substantially as in existence on the date of enactment) and was determined to be exempt from Federal income tax under section 501(c)(4) prior to the date of enactment. The conferees intend that such cooperative organizations will be subject to the general private inurement proscription with respect to any other type of transaction.

Intermediate sanctions for excess benefit transactions

As under the House bill, an "excess benefit transaction" includes, to the extent provided in Treasury Department regulations, any transaction in which the amount of any economic benefit provided to, or for the use of, any disqualified person is determined in whole or in part by the revenues of the organization, provided that the transaction constitutes prohibited inurement under present-law section 501(c)(3) or under section 501(c)(4), as amended. The conferees are aware that, under present law, certain revenue sharing arrangements have been determined not to constitute private inurement[38] and the conferees expect that it would continue to be the case that not all revenue sharing arrangements would be improper private inurement. However, the conferees intend no inference that Treasury or the Internal Revenue Service are bound by any particular prior rulings in this area. The conferees intend that the Treasury Department will issue prompt guidance providing examples of revenue-sharing arrangements that violate the private inurement prohibition and that such guidance will be applicable on a prospective basis.

The conference agreement clarifies that in applying existing tax-law standards (see sec. 162) in determining reasonableness of compensation and fair market value, the conferees intend that the parties to a transaction are entitled to rely on a rebuttable presumption of reasonableness that is described in the committee report accompanying the House bill. Because the intermediate sanctions generally will be effective for transactions entered into after September 13, 1995 (other than transactions pursuant to written contracts binding on that date), the conferees intend that parties to transactions entered into after September 13, 1995, and before January 1, 1997, will be entitled to rely on the rebuttable presumption of reasonableness if, within a reasonable period (e.g., 90 days) after entering into the compensation package, the parties satisfy the three criteria that give rise to the presumption. After December 31, 1996, the rebuttable presumption should arise only if the three criteria are satisfied *prior* to payment of the compensation (or, to the extent provided by the Secretary, within a reasonable period thereafter).

The conferees further clarify the treatment of reimbursements of excise tax liability and purchase of insurance covering such liabilities. Consistent with the rule that payment of personal expenses and benefits to or for the benefit of disqualified persons and nonfair-market value transactions benefiting such persons are treated as compensation only if it is clear that the organization intended and made the payments as compensation for services, any reimbursements by the organization of excise tax liability are treated as an excess benefit unless they are included in the disqualified person's compensation during the year the reimbursement is made. The total compensation package, including the amount of any reimbursement would be subject to the reasonableness requirement. Similarly, the payment by an applicable tax-exempt organization of premiums for an insurance policy providing liability insurance to a disqualified person for excess benefit taxes is an excess benefit transaction unless such premiums are treated as part of the compensation paid to such disqualified person.[39]

The conference agreement amends the definition of "disqualified person" to mean any individual who is in a position to exercise substantial authority over the affairs of the organization, whether

[38] See e.g., GCM 38283; GCM 38905; and GCM 39674.

[39] In addition, because individuals may be both members of and disqualified persons with respect to a non-exclusive applicable tax-exempt organization (e.g., a museum or neighborhood civic organization) and receive certain benefits (e.g., free admission, discounted gift shop purchases) in their capacity as members (rather than in their capacity as disqualified persons), the conferees intend that the Treasury Department provide guidance clarifying that such membership benefits may be excluded from consideration under the private inurement proscription and intermediate sanction rules.

by virtue of being an organization manager or otherwise, as well as certain family members and 35-percent owned entities of any such individual at any time during the 5- year period prior to the transaction at issue. A person having the title of "officer, director, or trustee" does not automatically have the status of a disqualified person.[40] In addition, the conferees grant the Secretary of Treasury authority to promulgate rules exempting broad categories of individuals from the category of "disqualified persons" (e.g., full-time bona fide employees who receive economic benefits of less than a threshold amount or persons who have taken a vow of poverty).

The conferees generally expect that the intermediate sanctions will be the sole sanction imposed in those cases in which the excess benefit does not rise to a level where it calls into question whether, on the whole, the organization functions as a charitable or other tax-exempt organization. In practice, revocation of tax-exempt status, with or without the imposition of excise taxes, will occur only when the organization no longer operates as a charitable organization.

The conference agreement eliminates the provision of the House bill that imposes a tax on tax-exempt organizations that terminate their tax-exempt status. To prevent avoidance of the penalty excise taxes in cases of private inurement of assets of a previously tax-exempt organization, the conference agreement provides that an organization will be treated as an applicable tax-exempt organization subject to the excise taxes on excess benefit transactions if, at any time during the two-year period preceding the transaction, it was a tax-exempt organization described in section 501(c)(3) or 501(c)(4) or a successor to such an organization.

Effective date.—As under the House bill, the provision generally applies to excess benefit transactions occurring on or after September 14, 1995. However, under the conference agreement, the provision does not apply to any benefits arising out of a transaction pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such benefits arose, and the terms of which have not materially changed.

Additional filing and public disclosure rules

Reporting of identity of certain disqualified persons, excise tax penalties and excess benefit transactions.—The conference agreement modifies the reporting requirements with respect to identifying certain disqualified persons. Under the conference agreement, tax-exempt organizations are required to disclose on their form 990 the name of each individual who was in a position to exercise substantial influence over the affairs of the organization (but not their family members and 35-percent owned entities) and such other information as the Secretary of Treasury may prescribe.

Furnishing copies of documents.—The conference agreement does not include the House bill provision.

Advertisement and solicitations.—The conference agreement does not include the House bill provision.

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[40] The conferees are aware that the IRS has issued guidance indicating that all physicians are considered "insiders" for purposes of applying the private inurement proscription. The conferees intend that physicians will be disqualified persons only if they are in a position to exercise substantial authority over the affairs of an organization.

Electronic dissemination of information.— The conference agreement does not include the House bill provision.

Penalties for failure to allow public inspection.—The conference agreement does not include the House bill provision.

Treasury Department studies.—The conference agreement does not include the House bill provision.

B. COMMON INVESTMENT FUND FOR PRIVATE FOUNDATIONS (SEC. 12701 OF THE SENATE AMENDMENT)

Present law

Code section 501(c)(3) requires that an organization be organized and operated exclusively for a charitable or other exempt purpose in order to qualify for tax-exempt status under that section.

Section 501(f) provides that an organization is treated as organized and operated exclusively for charitable purposes if it is comprised solely of members that are educational institutions and is organized and operated solely to hold, commingle, and collectively invest (including arranging for investment services by independent contractors) funds contributed by the members in stocks and securities, and to collect income from such investments and turn over such income, less expenses, to the members.

House bill

No provision.

Senate amendment

Under the Senate amendment, a cooperative service organization comprised solely of members that are tax-exempt private foundations and community foundations[41] is treated as organized and operated exclusively for charitable purposes if: (1) it has at least 20 members; (2) no one member holds (after the organization's second taxable year) more than 10 percent (by value) of the interests in the organization; (3) it is organized and controlled by its members, but no one member by itself controls the organization or any other member; (4) the members are permitted to dismiss any of the organization's investment advisors, if (following reasonable notice) members holding a majority of interest in the account managed by such advisor vote to remove such advisor; and (5) the organization is organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for investment services by independent contractors) funds contributed by the members in stocks and securities, and to collect income from such investments and turn over such income, less expenses, to the members. To qualify for tax-exempt status under present-law section 501(c)(3), a cooperative service organization described in the provision also must satisfy the other applicable requirements of that section (e.g., prohibition of private inurement, political activities, and substantial lobbying).

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[41] For purposes of the provision, "community foundations" are a form of charitable trust or fund (which generally are established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area) as to which section 170(b)(1)(A)(vi). See Treas. Reg. sec. 1.170A–9(e)(10).

A cooperative service organization meeting the criteria of the proposal will be subject to the present-law excise tax provisions applicable to private foundations (e.g., sec. 4941 rules governing self-dealing arrangements), other than sections 4940 and 4942. In addition, each member's allocable share (whether or not distributed) of the capital gain net income and gross investment income of the organization for any taxable year of the organization will be treated, for purposes of the excise tax imposed under present-law section 4940, as capital gain net income and gross investment income of the member for the taxable year of such member in which the taxable year of the organization ends.

Effective date.—Taxable years ending after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment.

C. EXCLUSION FROM UBIT FOR CERTAIN CORPORATE SPONSORSHIP PAYMENTS (SEC. 12702 OF THE SENATE AMENDMENT)

Present law

Although generally exempt from Federal income tax, tax-exempt organizations are subject to the unrelated business income tax ("UBIT") on income derived from a trade or business regularly carried on that is not substantially related to the performance of the organization's tax-exempt functions (secs. 511–514). Contributions or gifts received by tax-exempt organizations generally are not subject to the UBIT. However, present-law section 513(c) provides that an activity (such as advertising) does not lose its identity as a separate trade or business merely because it is carried on within a larger complex of other endeavors.[42] If a tax-exempt organization receives sponsorship payments in connection with an event or other activity, the solicitation and receipt of such sponsorship payments may be treated as a separate activity. The Internal Revenue Service (IRS) has taken the position that, under some circumstances, such sponsorship payments are subject to the UBIT.[43]

House bill

No provision.

Senate amendment

The Senate amendment provides that qualified sponsorship payments received by a tax-exempt organization (or State college or university described in section 511(a)(2)(B)) are exempt from the UBIT.

The Senate amendment defines "qualified sponsorship payments" as any payment made by a person engaged in a trade or

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[42] See *United States* v. *American College of Physicians,* 475 U.S. 834 (1986) (holding that activity of selling advertising in medical journal was not substantially related to the organization's exempt purposes and, as a separate business under section 513(c), was subject to tax).

[43] See Prop. Treas. Reg. sec. 1.513–4 (issued January 19, 1993, EE–74–92, IRB 1993–7, 71). These proposed regulations generally exclude from the UBIT financial arrangements under which the tax-exempt organization provides so-called "institutional" or "good will" advertising to a sponsor (i.e., arrangements under which a sponsor's name, logo, or product line is acknowledged by the tax-exempt organization). However, specific product advertising (e.g., "comparative or qualitative descriptions of the sponsor's products") provided by a tax-exempt organization on behalf of a sponsor is not shielded from the UBIT under the proposed regulations.

business with respect to which the person will receive no substantial return benefit other than the use or acknowledgment of the name or logo (or product lines) of the person's trade or business in connection with the organization's activities.[44] Such a use or acknowledgment does *not* include advertising of such person's products or services—meaning qualitative or comparative language, price information or other indications of savings or value, or an endorsement or other inducement to purchase, sell, or use such products or services. Thus, for example, if, in return for receiving a sponsorship payment, an organization promises to use the sponsor's name or logo in acknowledging the sponsor's support for an educational or fundraising event conducted by the organization, such payment would not be subject to the UBIT. In contrast, if the organization provides advertising of a sponsor's products, the payment made to the organization by the sponsor in order to receive such advertising would be subject to the UBIT (provided that the other, present-law requirements for UBIT liability are satisfied).

The Senate amendment specifically provides that a qualified sponsorship payment does not include any payment where the amount of such payment is contingent, by contract or otherwise, upon the level of attendance at an event, broadcast ratings, or other factors indicating the degree of public exposure to an activity. However, the fact that a sponsorship payment is contingent upon an event actually taking place or being broadcast, in and of itself, does not cause the payment to fail to be a qualified sponsorship payment. Moreover, mere distribution or display of a sponsor's products by the sponsor or the tax-exempt organization to the general public at a sponsored event, whether for free or for remuneration, is considered to be "use or acknowledgment" of the sponsor's product lines (as opposed to advertising), and thus will not affect the determination of whether a payment made by the sponsor is a qualified sponsorship payment.

The Senate amendment does not apply to the sale of advertising or acknowledgments in tax-exempt organization periodicals. For this purpose, the term "periodical" means regularly scheduled and printed material that is not related to and primarily distributed in connection with a specific sponsored event. For example, the provision does not apply to payments that lead to acknowledgments in a monthly journal, but does apply if a sponsor receives an acknowledgment in a program or brochure distributed at a sponsored event.

The Senate amendment specifically provides that, to the extent that a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, such portion of the payment will be treated as a separate payment. Thus, if a sponsorship payment made to a tax-exempt organization entitles the sponsor to both product advertising *and* use or acknowledgment of the sponsor's name or logo by the organization, then the UBIT would not apply to the amount of such payment that exceeds the fair market value of the product advertising provided to the sponsor. Moreover, the provision of facilities, services or other privileges by an exempt

[44] In determining whether a payment is a qualified sponsorship payment, it is irrelevant whether the sponsored activity is related or unrelated to the organization's exempt purpose.

organization to a sponsor or the sponsor's designees (e.g., complimentary tickets, pro-am playing spots in golf tournaments, or receptions for major donors) in connection with a sponsorship payment will not affect the determination of whether the payment is a qualified sponsorship payment. Rather, the provision of such goods or services will be evaluated as a separate transaction in determining whether the organization has unrelated business taxable income from the event. In general, if such services or facilities do not constitute a substantial return benefit or if the provision of such services or facilities is a related business activity, then the payments attributable to such services or facilities will not be subject to the UBIT.

The exemption provided by the Senate amendment is in addition to other present-law exceptions from the UBIT (e.g., the exceptions for activities substantially all the work for which is performed by volunteers and for activities not regularly carried on). No inference is intended as to whether any sponsorship payment received prior to 1996 was subject to the UBIT.

Effective date.—The provision applies to qualified sponsorship payments solicited or received after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment, except that the conference agreement clarifies that (1) the UBIT exception provided by the provision does not apply to any payment which entitles the payor to an acknowledgment or advertising in regularly scheduled and printed material, but only if such printed material is *published by (or on behalf of) the payee organization* and is not related to and primarily distributed in connection with a specific event conducted by the payee organization, and (2) just as the provision of facilities, services or other privileges by a tax-exempt organization to a sponsor or the sponsor's designees (complimentary tickets, pro-am playing spots in golf tournaments, or receptions for major donors) will be treated as a separate transaction that does not affect the determination of whether a sponsorship payment is a qualified sponsorship payment, a sponsor's receipt of a license to use an intangible asset (e.g., trademark, logo, or designation) of the tax-exempt organization likewise will be treated as separate from the qualified sponsorship transaction in determining whether the organization has unrelated business taxable income.[45]

[45] The conferees expect that, under present-law UBIT rules (see Rev. Rul. 81–178, 1981–2 C.B. 135), royalty income derived from licensing trademarks, emblems, and designations of a qualified amateur sports organization described in section 501(j)(2) (e.g., the U.S. Olympic Committee), as well as income received by such organizations from broadcasting, filming, and videotaping sports competitions and related events, will be treated as exempt from the UBIT. This exemption from the UBIT should not be affected by the fact that an amateur sports organization undertakes legal or other actions to protect the exclusivity of a licensing arrangement, or to prevent third parties from improperly using the organization's trademarks or representing or implying that such parties are an official sponsor of (or otherwise affiliated with) the organization or its competitive events.

D. TREATMENT OF DUES PAID TO AGRICULTURAL OR HORTICULTURAL ORGANIZATIONS (SEC. 14584 OF THE HOUSE BILL AND SEC. 12703 OF THE SENATE AMENDMENT)

Present law

Tax-exempt organizations generally are subject to the unrelated business income tax ("UBIT") on income derived from a trade or business regularly carried on that is not substantially related to the performance of the organization's tax-exempt functions (secs. 511–514). Dues payments made to a membership organization generally are not subject to the UBIT. However, several courts have held that, with respect to postal labor organizations, dues payments were subject to the UBIT when received from individuals who were not postal workers but who became "associate" members for the purpose of obtaining health insurance available to members of the organization. See *National League of Postmasters of the United States* v. *Commissioner,* No. 8032–93, T.C. Memo (May 11, 1995); *American Postal Workers Union, AFL–CIO* v. *United States,* 925 F.2d 480 (D.C. Cir. 1991); *National Association of Postal Supervisors* v. *United States,* 944 F.2d 859 (Fed. Cir. 1991).

In Rev. Proc. 95-21 (issued March 23, 1995), the IRS set forth its position regarding when associate member dues payments received by an organization described in section 501(c)(5) will be treated as subject to the UBIT. The IRS stated that dues payments from associate members will not be treated as subject to UBIT unless, for the relevant period, "the associate member category has been formed or availed of for the principal purpose of producing unrelated business income." Thus, under Rev. Proc. 95–21, the focus of the inquiry is upon the organization's purposes in forming the associate member category (and whether the purposes of that category of membership are substantially related to the organization's exempt purposes other than through the production of income), rather than upon the motive of the individuals who join as associate members.

House bill

Under the House bill, if an agricultural or horticultural organization described in section 501(c)(5) requires annual dues not exceeding $100 to be paid in order to be a member of such organization, then in no event will any portion of such dues be subject to the UBIT by reason of any benefits or privileges to which members of such organization are entitled. For taxable years beginning after 1995, the $100 amount will be indexed for inflation. The term "dues" is defined as "any payment required to be made in order to be recognized by the organization as a member of the organization." Thus, if a person is recognized as a member of an organization by virtue of having paid annual dues for his or her membership, then any subsequent payments made by that person during the year to purchase another membership in the same organization would not be within the scope of the provision.

Effective date.—The provision applies to taxable years beginning after December 31, 1994.

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.[46]

E. REPEAL TAX CREDIT FOR CONTRIBUTIONS TO SPECIAL COMMUNITY DEVELOPMENT CORPORATIONS (SEC. 13637 OF THE HOUSE BILL AND SEC. 12704 OF THE SENATE AMENDMENT)

Present law

Taxpayers are entitled to claim a tax credit for qualified contributions made to one of 20 non-profit community development corporations (CDCs) selected by the Secretary of Housing and Urban Development (HUD) to provide assistance in economically distressed areas. A qualified contribution means a transfer of cash to a selected CDC (made in the form of an equity investment or loan) which is made available for use by the CDC for at least 10 years to provide employment and business opportunities to low-income residents who live in an area where (1) the unemployment rate is not less than the national unemployment rate and (2) the median family income does not exceed 80 percent of the median gross income of residents of the jurisdiction of the local government which includes such area.[47]

If a taxpayer makes a qualified contribution, the credit may be claimed by the taxpayer for each taxable year during the 10-year period beginning with the taxable year during which the contribution was made. The credit that may be claimed for each year is equal to 5 percent of the amount of the contribution to the CDC. Thus, during the 10-year credit period, the taxpayer may claim aggregate credit amounts totaling 50 percent of his or her contribution. The aggregate amount of contributions that may be designated by any one CDC as eligible for the credit may not exceed $2 million. (Consequently, a total amount of $40 million in contributions will be eligible for the credit with respect to all 20 selected CDCs—and the maximum credit amounts will total $20 million over the 10-year credit period.)

On June 30, 1994, the Secretary of HUD announced the 20 CDCs selected to receive contributions that qualify for the credit. The eligible CDCs are located in the following areas: (1) Atlanta, (2) Baltimore, (3) Boston, (4) Chicago, (5) Cleveland, (6) Dallas, (7) Washington D.C., (8) Los Angeles, (9) Memphis, (10) Miami, (11) Brooklyn, (12) Newark, (13) Watsonville, Ca., (14) London, Ky., (15) Wiscasset, Maine, (16) Greenville, Miss., (17) Mayville, N.Y., (18)

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[46] The conferees intend that, with respect to dues payments received prior to the effective date of the provision, general UBIT rules under prior law would be applied in a manner consistent with the provision.

[47] The contribution to the CDC must be available for use by the CDC for at least ten years, but need not meet the requirements of a "contribution or gift" for purposes of section 170. In other words, a contribution eligible for the credit may be made in the form of a 10-year loan (or other long-term investment), the principal of which is to be returned to the taxpayer after the 10-year period. However, in the case of a donation of cash made by a taxpayer to an eligible CDC, the taxpayer is allowed to claim a charitable contribution deduction (subject to present-law rules under section 170), in addition to the special credit for qualified contributions to a selected CDC.

Barnesboro, Pa., (19) San Antonio, Texas, and (20) Christiansburg, Va.

House bill

The House bill repeals the special tax credit for qualified contributions to selected community development corporations.

Effective date.—The provision is effective for contributions made after the date of enactment (other than a contribution made pursuant to a legally enforceable agreement to make such contribution, if such agreement is in effect on the date of enactment).

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.

F. TAX GAMBLING INCOME OF INDIAN TRIBES; REPEAL TARGETED EXEMPTION FROM UBIT FOR GAMBLING IN CERTAIN STATES (SECS. 13631–13632 OF THE HOUSE BILL)

Present law

Tax treatment of Indian tribes

There is no specific statutory provision governing the Federal income tax liability of Indian tribes.[48] However, the IRS has long taken the position that Indian tribes, as well as wholly owned tribal corporations chartered under Federal law, are not taxable entities and, thus, are immune from Federal income taxes. (See Rev. Rul. 67–284, 1967–2 C.B. 55; Rev. Rul. 81–295, 1981–2 C.B. 15.) More recently, the IRS has ruled that any income earned by an unincorporated Indian tribe or Federally chartered tribal corporation is not subject to Federal income tax, regardless of whether the activities that produced the income are conducted on or off the tribe's reservation. (See Rev. Rul. 94–16, 1994–12 I.R.B. 1; Rev. Rul. 94–65, 1994–42 I.R.B. 10.[49]) In ordinary matters not governed by specific treaties or remedial legislation, individual members of Indian tribes are subject to the payment of Federal income tax (even if the income is distributed to individual tribal members out of income otherwise immune from tax when first received by the tribe).[50]

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[48] Section 7871 provides that Indian tribes are treated as States for certain limited tax purposes, such as for purposes of the issuance of certain tax-exempt bonds, certain excise tax exemptions, and for eligibility to receive deductible charitable contributions.

[49] These rulings further hold, however, that a corporation organized by an Indian tribe under State law is subject to Federal income tax on the income earned from commercial activities conducted on or off the tribe's reservation.

Legal commentators generally have concluded that "[u]nder this so-called Indian Commerce Clause [article I, section 8 of the Constitution] and Supreme Court cases, there is little constitutional limitation on the ability of the Federal government to tax Indian tribes or tribal members." Aprill, Ellen P., "Tribal Bonds: Indian Sovereignty and the Tax Legislative Process," 46 *Admin. L. Rev.* 333, 334 (1994).

[50] See *Squire* v. *Capoeman,* 351 U.S. 1, 6 (1956). One exception to this general rule is the exclusion from income provided for income received by Indians from the exercise of certain fishing rights guaranteed by treaties, Federal Statute or Executive order (sec. 7873). See also 25 U.S.C. sections 1401–1407 (funds appropriated in satisfaction of a judgment of the United States Court of Federal Claims in favor of an Indian tribe which are then distributed per capita to tribal members pursuant to a plan approved by the Secretary of Interior are exempt from Federal income taxes); 25 U.S.C. section 117b(a) (per capita distributions made to tribal members from Indian trust fund revenues are exempt from tax if the Secretary of the Interior approves of such distributions).

Tribal governments and corporations, as well as individual Indians and their property, generally are exempt from State taxation within their reservations, unless Congress clearly manifests its consent to such taxation.[51] In contrast, property and income earned by Indians outside the reservation generally have been held to be subject to State taxation.[52] In addition, the Supreme Court has upheld a State's right to impose taxes on commercial activities conducted on reservation lands, provided that the legal incidence of the tax falls on non-Indians and the balance of Federal, State, and tribal interests favors the State.[53]

In 1993, Congress enacted two Federal tax incentives for commercial activities conducted (by Indians or non-Indians) on any Indian reservation. These tax incentives are: (1) enhanced accelerated depreciation (generally, 60 percent of the normal recovery period) for certain property used in the conduct of a trade or business on a reservation (and certain connecting infrastructure property); and (2) a 20-percent incremental wage credit for certain wages and health insurance costs (up to $20,000 per employee) paid to tribal members and spouses who work on, and live on or near, a reservation. Neither of these tax incentives is available with respect to gambling activities (secs. 45A and 168(j)).

Taxation of gambling activities of nonprofit organizations

Although generally exempt from Federal income tax, tax-exempt organizations are subject to the unrelated business income tax (UBIT) on income derived from a trade or business regularly carried on that is not substantially related to the performance of the organization's tax- exempt functions (secs. 511-514).[54] Certain income, however, is exempted from the UBIT (such as interest, dividends, royalties, and certain rents), unless derived from debt-financed property (sec. 512(b)). Other exemptions from the UBIT are provided for activities in which substantially all the work is performed by volunteers and for income from the sale of donated goods (sec. 513(a)). In addition, a specific exemption from the UBIT is provided for bingo games conducted by tax-exempt organizations, provided that the conducting of the bingo games is not an activity ordinarily carried out on a commercial basis and the conducting of which does not violate any State or local law (sec. 513(f)). A specific exemption from the UBIT also is provided for qualified public entertainment activities (meaning entertainment or recreation activities of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes) conducted by an organi-

[51] See, e.g., *Oklahoma Tax Comm'n* v. *Chickasaw Nation,* 115 S. Ct. 2214 (1995); *Montana* v. *Blackfeet Tribe of Indians,* 471, U.S. 759 (1985); *McClanahan* v. *Arizona State Tax Comm'n,* 411 U.S. 164 (1973).

[52] See, e.g., *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973) (tribe held to be subject to State gross receipts tax on income earned from a ski resort operated by the tribe off-reservation). The Supreme Court also has ruled that a State may impose income tax on members of an Indian tribe who are employed by the tribe on tribal lands but who reside in the State outside of Indian country. *Oklahoma Tax Comm'n* v. *Chickasaw Nation, supra.*

[53] See *Oklahoma Tax Comm'n* v. *Chickasaw Nation, Supra; Cotton Petroleum* v. *New Mexico,* 490 U.S. 163 (1989) (upholding imposition of State severance tax on private producers of oil and gas on reservation lands).

[54] The UBIT applies not only to private, tax-exempt entities but also to colleges and universities that are agencies or instrumentalities of (or are owned or operated by) a State or local government or Indian tribal government (secs. 511(a)(2)(B) and 7871(a)(5)).

zation described in section 501(c)(3), (c)(4), or (c)(5) which regularly conducts an agricultural and educational fair or exposition as one of its substantial exempt purposes (sec. 513(d)).[55]

In *South End Italian Independent Club, Inc.* v. *Commissioner*, 87 T.C. 168 (1986), *acq.* 1987–2 C.B. 1, the court held that gambling profits of a social club described in section 501(c)(7) that were required by State law to be used for charitable purposes were fully deductible under section 162 in computing the UBIT liability of the social club. The effect of this decision was to exempt gambling income of that social club from UBIT. The IRS has indicated that, until further guidance is available with respect to this issue, the issue of the deductibility of amounts required under State law to be used for charitable or other so-called "lawful" purposes should be resolved consistent with the *South End* case, regardless of whether the gaming proceeds are donated to other charitable organizations or spent internally on the organization's own charitable activities.[56]

House bill

Tax treatment of Indian tribal gaming income

The House bill subjects to Federal income tax as unrelated business income ("UBI") income earned by an Indian tribe, or any corporate entity that is a tax-immune or tax-exempt entity by reason of being owned or controlled by an Indian tribe, from the conduct of class II or class III gaming activities (as defined under the Indian Gaming Regulatory Act, 25 U.S.C. secs. 2701–2721). Thus, Indian tribes will be subject to Federal income tax on income derived from class II gaming operations (e.g., bingo, pull-tabs, lotto) or class III gaming operations (e.g., a casino operated pursuant to a compact between the State government and Indian tribe). As under present-law UBIT rules, a gaming activity will be subject to tax under the provision only if the activity is regularly carried on.

Under the House bill, if an Indian tribe is required (by Federal, State, or local law) to use any portion of the net proceeds of gaming activities for charitable or other specified purposes, any portion so used may be deductible only as a charitable contribution, and (under present-law sec. 512(b)(10)) such deduction may not exceed 10 percent of the taxable income from the gaming activities. This 10-percent limitation, however, does not apply to any proceeds from gaming activities that are required to be paid as general revenues to the United States or any State or subdivision of a State (which generally will be fully deductible in computing the tribe's taxable income from gaming).

Repeal of UBIT exemption for gambling in certain States

In addition, the House bill repeals the special, off-Code provision that exempts from the UBIT gaming income earned by nonprofit organizations in North Dakota. With respect to other gaming activities conducted by tax-exempt organizations, the Treasury De-

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[55] In addition, section 311 of the Deficit Reduction Act of 1984 (as modified by the Tax Reform Act of 1986) provides a special, off-Code exemption from the UBIT for games of chance conducted by nonprofit organizations in the State of North Dakota.

[56] See IRS, *Exempt Organizations: Technical Instruction Program for FY 1996* (Training 4277–048 (7–95)) at page 96.

partment is directed to conduct a study on the nature and extent of gaming activities conducted by organizations exempt from tax under section 501(a), including an examination of: (1) the types of gaming activities (e.g., bingo, pull tabs, casino nights) engaged in by charities and other nonprofit organizations and the frequency of such activities; (2) the dollar volume of such gaming activities; (3) the nature and extent of the involvement of for-profit entities and private parties in the management or operation of gaming activities of nonprofits; (4) competition between taxable gaming activities and gaming activities that are exempt from Federal income tax; and (5) an analysis of the present-law tax treatment of gaming activities of tax-exempt organizations and any recommendations for change, including examination of the *South End* decision and special UBIT exception for bingo games. The Treasury Department is required to report the results of this study to Congress no later than July 1, 1996.

Effective date

The provision is effective on and after January 1, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

IX. Corporate and Other Reforms and Miscellaneous Provisions

1. REFORM THE TAX TREATMENT OF CERTAIN CORPORATE STOCK REDEMPTIONS AND OTHER EXTRAORDINARY DIVIDENDS (SEC. 13601 OF THE HOUSE BILL AND SEC. 12801 OF THE SENATE AMENDMENT)

Present law

A corporate shareholder generally can deduct at least 70 percent of a dividend received from another corporation. This dividends received deduction is 80 percent if the corporate shareholder owns at least 20 percent of the distributing corporation and generally 100 percent if the shareholder owns at least 80 percent of the distributing corporation.

Section 1059 of the Code requires a corporate shareholder that receives an "extraordinary dividend" to reduce the basis of the stock with respect to which the dividend was received by the nontaxed portion of the dividend. Whether a dividend is "extraordinary" is determined, among other things, by reference to the size of the dividend in relation to the adjusted basis of the shareholder's stock. Also, a dividend resulting from a non pro rata redemption or a partial liquidation is an extraordinary dividend. If the reduction in basis of stock exceeds the basis in the stock with respect to which an extraordinary dividend is received, the excess is taxed as gain on the sale or disposition of such stock, but not until that time (sec. 1059(a)(2)). The Treasury Department has general regulatory authority to carry out the purposes of the section.

Except as provided in regulations, the extraordinary dividend provisions do not apply to result in a double reduction in basis in the case of distributions between members of an affiliated group filing consolidated returns, where the dividend is eliminated or excluded under the consolidated return regulations. Double inclusion of earnings and profits (i.e., from both the dividend and from gain on the disposition of stock with a reduced basis) also should generally be prevented.[57] Treasury regulations provide for application of the provision when a corporation is a partner in a partnership that receives a distribution.[58]

In general, a distribution in redemption of stock is treated as a dividend, rather than as a sale of the stock, if it is essentially equivalent to a dividend (sec. 302). A redemption of the stock of a shareholder generally is essentially equivalent to a dividend if it does not result in a meaningful reduction in the shareholder's proportionate interest in the distributing corporation. Section 302(b) also contains several specific tests (e.g., a substantial reduction computation and a termination test) to identify redemptions that are not essentially equivalent to dividends. The determination whether a redemption is essentially equivalent to a dividend includes reference to the constructive ownership rules of section 318, including the option attribution rules of section 318(a)(4). The rules relating to treatment of cash or other property received in a reorganization contain a similar reference (sec. 356(a)(2)).

House bill

The House bill provides that, except as provided in regulations, a corporate shareholder will recognize gain immediately with respect to any redemption treated as a dividend (in whole or in part) when the nontaxed portion of the dividend exceeds the basis of the shares surrendered, if the redemption is treated as a dividend due to options being counted as stock ownership.[59]

In addition, the House bill requires immediate gain recognition whenever the basis of stock with respect to which any extraordinary dividend was received is reduced below zero.

Reorganizations or other exchanges involving amounts that are treated as dividends under section 356(a)(2) of the Code are treated as redemptions for purposes of applying the rules relating to redemptions under section 1059(e). For example, if a recapitalization or other transaction that involves a dividend under section 356 has the effect of a non pro rata redemption or is treated as a dividend due to options being counted as stock, the rules of section 1059 apply. Redemptions of shares, (or other extraordinary dividends on shares) held by a partnership will be subject to section 1059 to the extent there are corporate partners (e.g., appropriate adjustments to the basis of the shares held by the partnership and to the basis of the corporate partner's partnership interest will be required).

[57] See, H.R. Rep. 99–841, II–166, 99th Cong. 2d Sess. (Sept. 18, 1986).

[58] See, Treas. Reg. sec. 1.701–2(f), Example (2).

[59] Thus, for example, where a portion of such a distribution would not have been treated as a dividend due to insufficient earnings and profits, the rule applies to the portion treated as a dividend.

Under continuing section 1059(g) of present law, the Treasury Department is authorized to issue regulations where necessary to carry out the purposes and prevent the avoidance of the bill.

Effective date.—The provision is generally effective for distributions after May 3, 1995, unless made pursuant to the terms of a written binding contract in effect on that date, or a tender offer outstanding on that date. However, in applying the new gain recognition rules to any distribution that is not a partial liquidation, a non pro rata redemption, or a redemption that is treated as a dividend by reason of options, September 13, 1995 is substituted for May 3, 1995 in applying the transition rules.

No inference is intended regarding the tax treatment under present law of any transaction within the scope of the provision, including transactions utilizing options.

Senate amendment

The Senate amendment is the same as the House bill, except for the effective date.

Effective date.—The effective date is generally the same as the House bill, except that there is no transition for distributions pursuant to tender offers outstanding on the relevant date.

Conference agreement

The conference agreement follows the House bill.

In addition, the conferees wish to clarify that no inference is intended regarding the rules under present law (or in any case where the treatment is not specified in the provision) for determining the shares of stock with respect to which a dividend is received or that experience a basis reduction.

2. REQUIRE CORPORATE TAX SHELTER REPORTING (SEC. 13602 OF THE HOUSE BILL AND SEC. 12802 OF THE SENATE AMENDMENT)

Present law

An organizer of a tax shelter is required to register the shelter with the IRS (sec. 6111). If the principal organizer does not do so, the duty may fall upon any other participant in the organization of the shelter or any person participating in its sale or management. The shelter's identification number must be furnished to each investor who purchases or acquires an interest in the shelter. Failure to furnish this number to the tax shelter investors will subject the organizer to a $100 penalty for each such failure (sec. 6707(b)).

A penalty may be imposed against an organizer who fails without reasonable cause to timely register the shelter or who provides false or incomplete information with respect to it. The penalty is the greater of one percent of the aggregate amount invested in the shelter or $500. Any person claiming any tax benefit with respect to a shelter must report its registration number on her return. Failure to do so without reasonable cause will subject that person to a $250 penalty (sec. 6707(b)(2)).

A person who organizes or sells an interest in a tax shelter subject to the registration rule or in any other potentially abusive plan or arrangement must maintain a list of the investors (sec.

6112). A $50 penalty may be assessed for each name omitted from the list. The maximum penalty per year is $100,000 (sec. 6708).

For this purpose, a tax shelter is defined as any investment that meets two requirements. First, the investment must be (1) required to be registered under a Federal or state law regulating securities, (2) 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, or (3) a substantial investment. Second, it must be reasonable to infer that the ratio of deductions and 350 percent of credits to investment for any investor (i.e., the tax shelter ratio) may be greater than two to one as of the close of any of the first five years ending after the date on which the investment is offered for sale. An investment that meets these requirements will be considered a tax shelter regardless of whether it is marketed or customarily designated as a tax shelter (sec. 6111(c)(1)).

House bill

The House bill requires an organizer of a corporate tax shelter to register the shelter with the Secretary. Registration is required not later than the next business day after the day when the tax shelter is first offered to potential users. If an organizer is not a U.S. person, or if a required registration is not otherwise made, then any U.S. participant is required to register the shelter.

A corporate tax shelter is any investment, plan, arrangement or transaction: first, that has a significant purpose of tax avoidance or evasion by a corporate participant; second, that is offered to any potential participant under conditions of confidentiality; and third, for which the tax shelter organizers may receive total fees in excess of $100,000.

A transaction is offered under conditions of confidentiality if: (1) an offeree (or any person acting on its behalf) has an understanding or agreement with or for the benefit of any promoter to restrict or limit its disclosure of the transaction or any significant tax features of the transaction; or (2) the promoter claims, knows or has reason to know (or the promoter causes another person to claim or otherwise knows or has reason to know that a party other than the potential offeree claims) that the transaction (or one or more aspects of its structure) is proprietary to the promoter or any party other than the offeree, or is otherwise protected from disclosure or use. The promoter includes specified related parties.

Registration will require the submission of information identifying and describing the tax shelter and the tax benefits of the tax shelter, as well as such other information as the Treasury Department may require.

Tax shelter promoters are required to maintain lists of those who have signed confidentiality agreements, or otherwise have been subjected to nondisclosure requirements, with respect to particular tax shelters. In addition, promoters must retain lists of those paying fees with respect to plans or arrangements that have previously been registered (even though the particular party may not have been subject to confidentiality restrictions).

All registrations will be treated as taxpayer information under the provisions of section 6103 and will therefore not be subject to any public disclosure.

The penalty for failing to timely register a corporate tax shelter is the greater of $10,000 or 50 percent of the fees payable to any promoter with respect to offerings prior to the date of late registration (i.e., this part of the penalty does not apply to fee payments with respect to offerings after late registration). A similar penalty is applicable to actual participants in any corporate tax shelter who were required to register the tax shelter but did not. With respect to participants, however, the 50-percent penalty is based only on fees paid by that participant. Intentional disregard of the requirement to register by either a promoter or a participant increases the 50-percent penalty to 75 percent of the applicable fees.

Effective date.—The provision applies to any tax shelter offered to potential participants after the date of enactment. No filings are due, however, until the Treasury Department issues guidance with respect to the filing requirements.

Senate amendment

The Senate amendment is the same as the House bill, except that the Senate amendment provides that registration is not required if the U.S. participant notifies the promoter in writing not later than the seventh day after discussions began that the U.S. participant will not (and in fact does not) participate in the shelter. The Senate amendment also clarifies that a significant purpose of the structure of the transaction must be tax avoidance or evasion. The Senate amendment also adds a definition of related parties.

Effective date.—Same as the House bill.

Conference agreement

The conference agreement follows the Senate amendment, except that the seven-day period is modified to be a 90-day period.

A transaction is subject to this provision only if "a significant purpose" of the structure of the transaction is the avoidance or evasion of tax for a corporation (including a corporation that participates indirectly, for example, through a partnership, trust, or other non-corporate entity). It is not intended that registration will apply merely because tax consequences have been considered in structuring a transaction. The provision would not apply to a transaction where tax considerations are merely incidental and unimportant to the structure of the transaction. A "significant" purpose, however, need not be the only, or a "principal," purpose of the structure of a transaction in order for the provision to apply.

The existence of conditions of confidentiality, including proprietary claims or an agreement or understanding that limits disclosure by the participant or other person (such as the participant's advisors), shall be determined in light of all the facts and circumstances. Such a claim, understanding, or agreement need not be in writing, nor must it be legally enforceable under applicable state or federal law. Moreover, a claim, understanding, or agreement need not be explicit if, for example, a past pattern of dealings suggests that the participant or its advisors will be limited from, or be penalized by the promoter for, disclosure. The term "promoter" includes agents and professional advisors whether or not a formal principal-agent relationship exists.

Conditions of confidentiality include arrangements that limit the participant, or its agents, advisors, or other persons acting on its behalf, from disclosing the transaction or any significant tax features of the transaction. If a taxpayer contemplating a transaction consults a tax attorney for advice on structuring the anticipated transaction, the fact that such advice may be protected from disclosure by the attorney under the attorney-client privilege generally would not by itself bring the transaction within the ambit of this provision, because the privilege does not restrict the client's disclosure of the details of the structure of a transaction.

By contrast, this provision would apply where a tax avoidance transaction is promoted by an attorney to potential participants under conditions that limit potential participants from disclosing the structure of the transaction or any significant tax features of the transaction. Similarly, registration could be required, for example, in cases where a tax shelter is promoted through attorneys in an effort to avoid disclosure by the participant or its agents or advisors. A transaction will not be treated as proprietary merely because a financial advisor hopes to be rewarded for the time spent structuring the transaction.

The conferees encourage Treasury to consider exercising its existing authority under section 6111(e)(3) to consider the effects of the securities laws and to exempt specific kinds of transactions from the application of the new registration requirement in appropriate cases, provided that there is not potential for abuse. In addition, Treasury should consider issuing guidance that would allow the Internal Revenue Service to exercise discretion in (1) excluding from the penalty calculation fees received by the promoter which are not, directly or indirectly, attributable to the tax shelter, and (2) abating penalties in appropriate cases for reasonable cause. Treasury may issue such guidance in a form other than regulations (such as by rulings or revenue procedures).

Effective date.—The provision applies to any tax shelter offered to potential participants after the date the Treasury prescribes guidance with respect to the filing requirements. After the issuance of such guidance, the conferees anticipate that the Treasury will issue proposed regulations on this provision, which will give interested parties an opportunity to comment formally on Treasury's guidance.

3. DISALLOW INTEREST DEDUCTION FOR CORPORATE-OWNED LIFE INSURANCE POLICY LOANS (SEC. 13603 OF THE HOUSE BILL AND SEC. 12803 OF THE SENATE AMENDMENT)

Present law

No Federal income tax generally is imposed on a policyholder with respect to the earnings under a life insurance contract ("inside buildup").[60] Further, an exclusion from Federal income tax is pro-

[60] This favorable tax treatment is available only if a life insurance contract meets certain requirements designed to limit the investment character of the contract (sec. 7702). Distributions from a life insurance contract (other than a modified endowment contract) that are made prior

vided for amounts received under a life insurance contract paid by reason of the death of the insured (sec. 101(a)). The policyholder may borrow with respect to the life insurance contract without affecting these exclusions, subject to certain limitations.

The limitations on borrowing with respect to a life insurance contract under present law provide that no deduction is allowed for any interest paid or accrued on any indebtedness with respect to one or more life insurance policies owned by the taxpayer covering the life of any individual who (1) is an officer or employee of, or (2) is financially interested in, any trade or business carried on by the taxpayer to the extent that the aggregate amount of such debt with respect to policies covering the individual exceeds $50,000 (sec. 264(a)(4)).

Further, no deduction is allowed for any amount paid or accrued on debt incurred or continued to purchase or carry a life insurance, endowment or annuity contract pursuant to a plan of purchase that contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of the contract.[61] An exception to the latter rule is provided, permitting deductibility of interest on bona fide debt that is part of such a plan, if no part of 4 of the annual premiums due during the first 7 years is paid by means of debt (the "4-out-of-7 rule") (sec. 264(c)(1)). Provided the transaction gives rise to debt for Federal income tax purposes, and provided the 4-out-of-7 rule is met,[62] a company may under present law borrow up to $50,000 per employee, officer, or financially interested person to purchase or carry a life insurance contract covering such a person, and is not precluded under section 264 from deducting the interest on the debt, even though the earnings inside the life insurance contract (inside buildup) are tax-free, and in fact the taxpayer has full use of the borrowed funds.

House bill

Under the House bill, no deduction is allowed for interest paid or accrued on any indebtedness with respect to one or more life insurance policies or annuity or endowment contracts owned by the taxpayer covering any individual who is (1) an officer or employee of, or (2) financially interested in any trade or business carried on

to the death of the insured generally are includable in income, to the extent that the amounts distributed exceed the taxpayer's basis in the contract; such distributions generally are treated first as a tax-free recovery of basis, and then as income (sec. 72(e)). In the case of a modified endowment contract, however, in general, distributions are treated as income first, loans are treated as distributions (i.e., income rather than basis recovery first), and an additional ten percent tax is imposed on the income portion of distributions made before age 59½ and in certain other circumstances (secs. 72(e) and (v)). A modified endowment contract is a life insurance contract that does not meet a statutory "7-pay" test, i.e., generally is funded more rapidly than seven annual level premiums (sec. 7702A).

[61] The statute provides that the $50,000 limitation applies only with respect to contracts purchased after June 20, 1986. However, additional limitations are imposed on the deductibility of interest with respect to single premium contracts (sec. 264(a)(2)), and on the deductibility of premiums paid on a life insurance contract covering the life of any officer or employee or person financially interested in a trade or business of the taxpayer when the taxpayer is directly or indirectly a beneficiary under the contract (sec. 264(a)(1)).

[62] Interest deductions are disallowed if any of the disallowance rules of section 264(a)(2)–(4) apply. The disallowance rule of section 264(a)(3) is not applicable if one of the exceptions of section 264(c), such as the 4-out-of-7 rule (sec. 264(c)(1)) is satisfied. In addition to the specific disallowance rules of section 264, generally applicable principles of tax law apply.

by the taxpayer, regardless of the aggregate amount of debt with respect to policies or contracts covering the individual.[63]

Effective date.—The provision is effective with respect to interest paid or accrued after December 31, 1995 (subject to the phase-in).

The provision is phased in over a 4-year period. Under the phase-in, a percentage of the interest deduction that would otherwise be disallowed is nevertheless allowed. The interest deduction allowed under the phase-in is for interest on debt incurred before September 18, 1995, with respect to a life insurance policy that was in effect on that date and that covers only the individual who was insured under that policy on that date. Only interest that would have been allowed as a deduction but for the amendment made by the bill is allowed under the phase-in.

During the 4-year phase-in period, the percentage of the deduction for interest that is disallowed for periods in 1996 is 20 percent; in 1997, 40 percent; in 1998, 60 percent; and in 1999, 80 percent. No deduction for interest is allowed under the phase-in after 1999. For taxpayers whose taxable year is not the calendar year, interest accrued in the portion of the taxable year that falls during any calendar year in the 4-calendar-year phase-in period is allowed in accordance with the percentage for that calendar year.

The House bill provides a special 4-year income-spreading rule for certain amounts received under a contract, interest on debt under which was allowed as a deduction prior to December 31, 1995, but is disallowed under the provision. The 4-year income-spreading rule applies for any amount that is received under such a contract on the complete surrender, redemption or maturity of the contract in 1996, or in full discharge of the obligation under the contract that is in the nature of a refund of the consideration paid for the contract in 1996, to the extent the amount received is included in the taxpayer's income for the taxable year in which such event occurs. Under the special 4-year income-spreading rule, the amount included in income upon any such event in 1996 is includable ratably over the first four taxable years beginning with the taxable year the amount would otherwise have been includable. Utilization of this 4-year income-spreading rule does not cause interest paid or accrued prior to January 1, 1996, to be nondeductible solely by reason of failure to meet the 4-out-of-7 rule.

The provision does not apply to interest on debt with respect to contracts purchased on or before June 20, 1986 (thus continuing the effective date provision of the $50,000 limitation enacted in the 1986 Act).[64]

No inference is intended as to the treatment of interest paid or accrued under present law.

Senate amendment

The Senate amendment is the same as the House bill, except that the Senate amendment provides (1) an exception for key per-

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[63] The provisions disallows the deduction for interest even if the deduction would not be disallowed under any other rule. Thus, for example, if a deduction would not be disallowed under section 264(a)(3) because the 4-out-of-7 rule is met, this provision neverthesless disallows the deduction.

[64] This rule has the same meaning under the House bill as its meaning under the 1986 Act.

son insurance, (2) different effective date rules, and (3) a different phase-in rule.

An exception is provided retaining present law for interest on indebtedness with respect to life insurance policies covering up to 25 key persons. A key person is an individual who is either an officer or a 20-percent owner of the taxpayer. The number of individuals that can be treated as key persons may not exceed the greater of (1) five individuals, or (2) the lesser of 5 percent of the total number of officers and employees of the taxpayer, or 25 individuals. Interest paid or accrued on debt with respect to a life insurance contract covering a key person is deductible only to the extent the rate of interest does not exceed Moody's Corporate Bond Yield Average—Monthly Average Corporates for each month interest is paid or accrued.

Effective date.—With respect to debt incurred after December 31, 1995, no deduction is allowed for interest paid or accrued after December 31, 1995, except with respect to policies that satisfy the key person exception.

A phase-in rule is provided under the Senate amendment. With respect to debt incurred on or before December 31, 1995, any otherwise deductible interest paid or accrued after October 13, 1995, and before January 1, 2001, is allowed to the extent the rate of interest does not exceed the lesser of (1) the borrowing rate specified in the contract as of October 13, 1995, or (2) a percentage of Moody's Corporate Bond Yield Average—Monthly Average Corporates for each month the interest is paid or accrued. For interest paid or accrued after October 13, 1995, and before January 1, 1997, the percentage of the Moody's rate is 100 percent; for interest paid or accrued in 1997, the percentage is 95 percent; for 1998, the percentage is 90 percent; for 1999, the percentage is 85 percent; for 2000, the percentage is 80 percent; and for 2001 and thereafter, the percentage is 0 percent. Only interest that would have been allowed as a deduction but for the amendment made by the bill is allowed under the phase-in.

Any amount included in income during 1996, 1997, 1998, 1999, 2000 or 2001, that is received under a contract described in the proposal on the complete surrender, redemption or maturity of the contract or in full discharge of the obligation under the contract that is in the nature of a refund of the consideration paid for the contract, is includable ratably over the first four taxable years beginning with the taxable year the amount would otherwise have been includable. Utilization of this 4-year income-spreading rule does not cause interest paid or accrued prior to January 1, 2001, to be nondeductible solely by reason of failure to meet the 4-out-of-7 rule. Similarly, utilization of this 4-year income-spreading rule does not cause interest paid or accrued prior to January 1, 2001, to be nondeductible solely by reason of causing the contract to be treated as a single premium contract within the meaning of section 264(b)(1) (i.e., a contract in which substantially all of the premiums are paid within 4 years after the date of purchase). In addition, the lapse of a contract after October 13, 1995, due to nonpayment of premiums, does not cause interest paid or accrued prior to January 1, 2001, to be nondeductible solely by reason of causing the contract to be treated as a single premium contract within the meaning of section 264(b)(1) or by reason of failure to meet the 4-out-of-7 rule.

In the case of an insurance company, the unamortized balance of policy expenses attributable to a contract with respect to which the 4-year income-spreading treatment is allowed to the policyholder is deductible in the year in which the transaction giving rise to income-spreading occurs.

The provision generally does not apply to interest on debt with respect to contracts purchased on or before June 20, 1986 (thus continuing the effective date provision of the $50,000 limitation enacted in the 1986 Act), except that interest on such contracts paid or accrued after October 13, 1995, is allowable only to the extent the rate of interest does not exceed Moody's Corporate Bond Yield Average—Monthly Average Corporates for the month the interest is paid or accrued.

Under the Senate amendment, there is no inference as to the tax treatment of interest paid or accrued under present law.

Conference agreement

The conference agreement follows the Senate amendment, with modifications.

The conference agreement provides that, under the key person exception, the number of individuals that can be treated as key persons may not exceed the greater of (1) five individuals, or (2) the lesser of 5 percent of the total number of officers and employees of the taxpayer, or 10 individuals.

The phase-in rule is modified under the conference agreement. The conference agreement provides that with respect to debt incurred on or before December 31, 1995,[65] any otherwise deductible interest paid or accrued after October 13, 1995, and before January 1, 1999, is allowed to the extent the rate of interest does not exceed the lesser of (1) the borrowing rate specified in the contract as of October 13, 1995, or (2) a percentage of Moody's Corporate Bond Yield Average—Monthly Average Corporates for each month the interest is paid or accrued. Under the conference agreement, for interest paid or accrued after October 13, 1995, and before January 1, 1996, the percentage of the Moody's rate is 100 percent; for interest paid or accrued in 1996, the percentage is 90 percent; for interest paid or accrued in 1997, the percentage is 80 percent; for 1998, the percentage is 70 percent; for 1999 and thereafter, the percentage is 0 percent. As under the Senate amendment, only interest that would have been allowed as a deduction but for the provision is allowed under the phase-in.

The conference agreement further provides that during the phase-in period, interest that is deductible does not include interest on borrowings by the taxpayer with respect to contracts on the lives of more than 20,000 insured individuals, effective for interest paid or accrued after December 31, 1995. For this purpose, all persons treated as a single employer are treated as one taxpayer.

The conference agreement provides an exception under the effective date with respect to any life insurance contract entered into

[65] The conference agreement provides an exception under the effective date with respect to any life insurance contract entered into in 1994 or 1995, as described below.

during 1994 or 1995. In the case of such contracts, with respect to debt incurred before January 1, 1997, no deduction is allowed for interest paid or accrued after December 31, 1996, except with respect to policies that satisfy the key person exception, and except as provided under the phase-in rule. Thus, with respect to interest on amounts borrowed during 1996 with respect to such a contract, the phase-in rule applies, capping the rate for determining the amount of deductible interest at the lesser of (1) the borrowing rate specified in the contract as of October 13, 1995, or (2) the applicable percentage of Moody's Corporate Bond Yield Average—Monthly Average Corporates for each month the interest is paid or accrued. For example, for interest paid or accrued in 1996 on amounts borrowed in 1996 with respect to such a contract, the applicable percentage is 90 percent.

Under the conference agreement, the provision generally does not apply to interest on debt with respect to contracts purchased on or before June 20, 1986 (thus continuing the effective date provision of the $50,000 limitation enacted in the 1986 Act). If such a contract provides for a fixed rate of interest, then interest on such a contract paid or accrued after October 13, 1995, is allowable only to the extent the fixed rate of interest does not exceed Moody's Corporate Bond Yield Average—Monthly Average Corporates for the month in which the contract was purchased. If such a contract does not provide for a fixed rate of interest, then interest on such a contract paid or accrued after October 13, 1995, is allowable only to the extent the rate of interest for each fixed period selected by the taxpayer does not exceed Moody's Corporate Bond Yield Average—Monthly Average Corporates, for the month immediately preceding the beginning of the fixed period.[66] The fixed period must be 12 months or less.

4. PHASE-OUT PREFERENTIAL TAX DEFERRAL FOR CERTAIN LARGE FARM CORPORATIONS REQUIRED TO USE ACCRUAL ACCOUNTING (SEC. 13604 OF THE HOUSE BILL AND SEC. 12804 OF THE SENATE AMENDMENT)

Present law

A corporation (or a partnership with a corporate partner) engaged in the trade or business of farming must use an accrual method of accounting for such activities unless such corporation (or partnership), for each prior taxable year beginning after December 31, 1975, did not have gross receipts exceeding $1 million. If a farm corporation is required to change its method of accounting, the section 481 adjustment resulting from such change is included in gross income ratably over a 10-year period, beginning with the year of change. This rule does not apply to a family farm corporation.

A family corporation (or a partnership with a family corporation as a partner) is required to use an accrual method of accounting for its farming business unless, for each prior taxable year beginning after December 31, 1985, such corporation (and any predecessor corporation) did not have gross receipts exceeding $25 mil-

[66] It is intended that conforming a contract to satisfy this interest rate limitation not be treated as a material modification for purposes of this grandfather rule or sections 101(f), 7702 or 7702A. No inference is intended as to whether such a change is a material modification.

lion. A family corporation is one where 50 percent or more of the stock of the corporation is held by one (or in some limited cases, two or three) families.

A family farm corporation that must change to an accrual method of accounting as a result of the 1987 Act provision is to establish a suspense account in lieu of including the entire amount of the section 481 adjustment in gross income. The amount of the suspense account is required to be included in gross income if the corporation ceases to be a family corporation or to the extent the gross receipts of the corporation declines.

House bill

The House bill repeals the ability of a family farm corporation to establish a suspense account when it is required to change to an accrual method of accounting. Thus, under the House bill, any family farm corporation required to change to an accrual method of accounting would include in gross income the section 481 adjustment applicable to the change ratably over a 10-year period beginning with the year of change. In addition, any taxpayer with an existing suspense account is required to include the account in gross income ratably over a 20-year period beginning in the first taxable year beginning after September 13, 1995, subject to the present-law requirements to include all or a portion of the account in income more rapidly in certain circumstances.

Effective date.—The provision is effective for taxable years ending after September 13, 1995.

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.

5. PHASED-IN REPEAL OF SECTION 936 CREDIT (SEC. 13605 OF THE HOUSE BILL AND SEC. 12805 OF THE SENATE AMENDMENT)

Present law

Certain domestic corporations with business operations in the U.S. possessions (including, for this purpose, Puerto Rico and the U.S. Virgin Islands) may elect the section 936 credit which generally eliminates the U.S. tax on certain income related to their operations in the possessions. In contrast to the foreign tax credit, the possessions tax credit is a "tax sparing" credit. That is, the credit is granted whether or not the electing corporation pays income tax to the possession. Income exempt from U.S. tax under this provision falls into two broad categories: (1) possession business income, which is derived from the active conduct of a trade or business within a U.S. possession or from the sale or exchange of substantially all of the assets that were used in such a trade or business; and (2) qualified possession source investment income ("QPSII"), which is attributable to the investment in the possession or in certain Caribbean Basin countries of funds derived from the active conduct of a possession business.

In order to qualify for the section 936 credit for a taxable year, a domestic corporation must satisfy two conditions. First, the corporation must derive at least 80 percent of its gross income for the three-year period immediately preceding the close of the taxable year from sources within a possession. Second, the corporation must derive at least 75 percent of its gross income for that same period from the active conduct of a possession business.

A domestic corporation that has elected the section 936 credit and that satisfies these two conditions for a taxable year generally is entitled to a credit equal to the U.S. tax attributable to the sum of the taxpayer's possession business income and its QPSII. However, the amount of the credit attributable to possession business income is subject to the limitations enacted by the Omnibus Budget Reconciliation Act of 1993 ("1993 Act"). Under the economic activity limit, the amount of the credit with respect to such income cannot exceed the sum of a portion of the taxpayer's wage and fringe benefit expenses and depreciation allowances (plus, in certain cases, possession income taxes). In the alternative, the taxpayer may elect to apply a limit equal to the applicable percentage of the credit that would otherwise be allowable with respect to possession business income; the applicable percentage is phased down, beginning at 60 percent for 1994 and reaching 40 percent for 1998 and thereafter. The amount of the section 936 credit attributable to QPSII is not subject to these limitations.

House bill

The House bill generally repeals the section 936 credit for taxable years beginning after December 31, 1995. However, a corporation that is an existing credit claimant is eligible to claim section 936 credits for an additional 10 years under a grandfather rule.

A corporation is an existing credit claimant if it claimed the section 936 credit for any of its base period years (as defined below). A corporation that adds a substantial new line of business after September 13, 1995, ceases to be an existing credit claimant as of the beginning of the taxable year in which it adds such new line of business. A corporation that is an existing credit claimant is eligible to claim credits during the grandfather period with respect to operations in any possession.

The corporation's possession income eligible for the section 936 credit for each year in the grandfather period is subject to a cap computed based on the corporation's possession income for the base period years ("average adjusted base period possession income"). A corporation's possession income equals the sum of its possession business income and QPSII. Average adjusted base period possession income is the average of the adjusted possession income for each of the corporation's base period years. For purposes of this computation, the possession income for each of the base period years is adjusted by an inflation factor reflecting inflation from such year to the year to which the cap is being applied. In addition, as a proxy for real growth in income throughout the base period, the inflation factor is increased by 5 percentage points compounded for each year from such year to the corporation's first taxable year beginning on or after September 13, 1995.

The corporation's base period years generally are 3 of the corporation's 5 most recent taxable years ending before September 13, 1995, determined by disregarding the years in which such adjusted possession incomes were highest and lowest. For this purpose, only years in which the corporation had significant possession income are taken into account. A corporation is considered to have significant possession income for a taxable year if such income exceeds 2% of the corporation's possession income for each of the 6 taxable years ending with the first taxable year ending on or after September 13, 1995. If the corporation has significant possession income for only 4 of the 5 most recent taxable years ending before September 13, 1995, then the base period years are determined by disregarding the year in which the corporation's possession income was lowest. If the corporation has significant possession income for only 3 years or fewer of such 5 years, then the base period years are all such years. If there is no year of such 5 years in which the corporation has significant possession income, then the corporation may use as its base period its first taxable year ending on or after September 13, 1995; for this purpose, the amount of possession income taken into account is the annualized amount of such income for the portion of the year ended August 31, 1995, adjusted for inflation. As an alternative, a corporation may elect to use as its base period its taxable year ending in 1992.

If a corporation's possession income for a year during the grandfather period exceeds its income cap, then the corporation's possession income for purposes of computing its section 936 credit is an amount equal to the cap. The reduction in the corporation's income to the amount of the cap is allocated between its possession business income and its QPSII for the year to which the cap is being applied based on the relative amounts of the corporation's possession business income and QPSII for such year. In determining the corporation's section 936 credit, the economic activity limit or applicable percentage limit is applied to the corporation's possession business income as reduced to reflect the application of the cap.

Effective date.—The provision in the House bill is effective for taxable years beginning after December 31, 1995.

Senate amendment

The Senate amendment also generally repeals the section 936 credit for taxable years beginning after December 31, 1995. However, a corporation that is an existing credit claimant with respect to a possession is eligible to claim section 936 credits for a transition period under a grandfather rule.

A corporation is an existing credit claimant with respect to a particular possession if it is engaged in the active conduct of business in such possession on October 13, 1995, and it has elected the benefits of section 936 for its taxable year that includes such date. A corporation is treated as engaged in the active conduct of a business on such date if it is engaged in such active conduct before January 1, 1996, and it has a binding contract with respect to such business on October 13, 1995. A corporation that adds a substantial new line of business after October 13, 1995, ceases to be an existing credit claimant with respect to such possession as of the beginning of the taxable year in which it adds such new line of business. A corporation that is an existing credit claimant with respect to a possession (or possessions) is eligible to claim credits during the grandfather period only with respect to operations in such possession (or possessions).

The length of the grandfather period depends upon the type of income with respect to which the section 936 credit is being claimed. The grandfather period for the section 936 credit attributable to business income is six years, with the section 936 credit attributable to business income eliminated for taxable years beginning after December 31, 2001. The computation of the section 936 credit attributable to possession business income during the grandfather period depends upon whether the corporation has in effect an election to use the applicable percentage limit. For corporations using the economic activity limit, present law continues to apply in computing the section 936 credit attributable to possession business income throughout the grandfather period. For corporations using the applicable percentage limit, present law continues to apply in computing the section 936 credit attributable to possession business income through the taxable year beginning in 1998. For taxable years beginning in 1999 through 2001, the section 936 credit attributable to possession business income (determined under the applicable percentage limit) is limited to the following percentage of the amount otherwise determined: for 1999, 75 percent; for 2000, 50 percent; and for 2001, 25 percent. A corporation that elected to use the applicable percentage limit is permitted to revoke such election, provided that the revocation is made not later than with respect to the corporation's first taxable year beginning after December 31, 1996.

The grandfather period for the section 936 credit attributable to QPSII is five years, with the section 936 credit attributable to QPSII eliminated for taxable years beginning after December 31, 2000. For taxable years during the grandfather period, the section 936 credit attributable to QPSII is available only for income derived from a qualifying asset (provided that such income would otherwise qualify as QPSII under present law). A qualifying asset is an asset held by the corporation on October 13, 1995, or an asset that was purchased through the rollover of the proceeds of such an asset or its successor assets. For taxable years beginning in 1996 through 2000, income that would otherwise qualify as QPSII and that is derived from a qualifying asset is eligible for the section 936 credit attributable to QPSII only through the date that the asset, if distributed, would be eligible for the maximum reduction in local taxes (as determined under local law in effect on October 13, 1995).

Under the Senate amendment, a special grandfather rule applies to corporations that are existing credit claimants with respect to Guam, American Samoa or the Commonwealth of the Northern Mariana Islands. A corporation that is an existing credit claimant with respect to such a possession continues to determine its section 936 credit with respect to operations in such possession under present law for its taxable years beginning before January 1, 2006.

Effective date.—The provision in the Senate amendment is effective on date of enactment.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with modifications and clarifications. The conference agreement generally repeals the section 936 credit for taxable years beginning after December 31, 1995. However, the conference agreement provides grandfather rules under which a corporation that is an existing credit claimant is eligible to claim section 936 credits for a transition period. As under the Senate amendment, a special transition rule applies to the section 936 credit attributable to operations in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

For taxable years beginning after December 31, 1995, the section 936 credit applies only to a corporation that qualifies as an existing credit claimant (as defined below). A corporation that is an existing credit claimant is subject to the limitations described below in determining the section 936 credit for taxable years beginning after December 31, 1995.

The section 936 credit attributable to QPSII is eliminated for taxable years beginning after December 31, 1995. For taxable years beginning after December 31, 1995, the section 936 credit is available only with respect to possession business income. The computation of the section 936 credit attributable to possession business income during the grandfather period depends upon whether the corporation is using the economic activity limit or the applicable percentage limit.

For corporations that are existing credit claimants and that use the economic activity limit, the section 936 credit attributable to possession business income (determined under the economic activity limit) continues to be determined as under present law for taxable years beginning after December 31, 1995 and before January 1, 2002. For taxable years beginning after December 31, 2001 and before January 1, 2006, the corporation's possession business income that is eligible for the section 936 credit is subject to a cap computed as described below. For taxable years beginning in 2006 and thereafter, the section 936 credit attributable to possession business income (determined under the economic activity limit) is eliminated.

For corporations that are existing credit claimants and that elected to use the applicable percentage limit and not to use the economic activity limit, the section 936 credit attributable to possession business income continues to be determined as under present law for taxable years beginning after December 31, 1995 and before January 1, 1998. For taxable years beginning after December 31, 1997 and before January 1, 2006, the corporation's possession business income that is eligible for the section 936 credit is subject to a cap computed as described below. For taxable years beginning in 2006 and thereafter, the section 936 credit attributable to possession business income (determined under the applicable percentage limit) is eliminated.

A corporation that had elected to use the applicable percentage limit is permitted to revoke that election under present law. Under the conference agreement, as under the Senate amendment, such a revocation must be made not later than with respect to the first taxable year beginning after December 31, 1996; such revocation, if made, applies to such taxable year and to all subsequent taxable years. Accordingly, a corporation that had an election in effect to use the applicable percentage limit could revoke such election effective for its taxable year beginning in 1997 and thereafter; such corporation would continue to use the applicable percentage limit for its taxable year beginning in 1996 and would use the economic activity limit for its taxable year beginning in 1997 and thereafter.

The cap on a corporation's possession business income that is eligible for the section 936 credit is computed based on the corporation's possession business income for the base period years ("average adjusted base period possession business income"). Average adjusted base period possession business income is the average of the adjusted possession business income for each of the corporation's base period years. For the purpose of this computation, the corporation's possession business income for a base period year is adjusted by an inflation factor that reflects inflation from such year to 1995. In addition, as a proxy for real growth in income throughout the base period, the inflation factor is increased by 5 percentage points compounded for each year from such year to the corporation's first taxable year beginning on or after October 14, 1995.

The corporation's base period years generally are three of the corporation's five most recent years ending before October 14, 1995, determined by disregarding the taxable years in which the adjusted possession business incomes were highest and lowest. For purposes of this computation, only years in which the corporation had significant possession business income are taken into account. A corporation is considered to have significant possession business income for a taxable year if such income exceeds 2 percent of the corporation's possession business income for the each of the six taxable years ending with the first taxable year ending on or after October 14, 1995. If the corporation has significant possession business income for only four of the five most recent taxable years ending before October 14, 1995, the base period years are determined by disregarding the year in which the corporation's possession business income was lowest. If the corporation has significant possession business income for three years or fewer of such five years, then the base period years are all such years. If there is no year of such five taxable years in which the corporation has significant possession business income, then the corporation may use as its base period its first taxable year ending on or after October 14, 1995; for this purpose, the amount of possession business income taken into account would be the annualized amount of such income for the portion of the year ended September 30, 1995.

As one alternative, the corporation may elect to use its taxable year ending in 1992 as its base period (with the adjusted possession business income for such year constituting its cap). As another alternative, the corporation may elect to use as its cap the annualized amount of its possession business income for the first ten months of calendar year 1995, calculated by excluding any extraordinary items (as determined under generally accepted accounting principles) for such period. For this purpose, the conferees intend that transactions with a related party that are not in the ordinary course of business will be considered to be extraordinary items.

If a corporation's possession business income in a year for which the cap is applicable exceeds the cap, then the corporation's possession business income for purposes of computing its section 936 credit for the year is an amount equal to the cap. The corporation's section 936 credit continues to be subject to either the economic activity limit or the applicable percentage limit, with such limit applied to the corporation's possession business income as reduced to reflect the application of the cap.

A corporation is an existing credit claimant if (1) the corporation is engaged in the active conduct of a trade or business within a possession on October 13, 1995, and (2) the corporation has elected the benefits of section 936 pursuant to an election which is in effect for its taxable year that includes October 13, 1995. A corporation that adds a substantial new line of business after October 13, 1995, ceases to be an existing credit claimant as of the beginning of the taxable year during which such new line of business is added.

For purposes of these rules, a corporation is treated as engaged in the active conduct of a trade or business within a possession on October 13, 1995, if such corporation is engaged in the active conduct of such trade or business before January 1, 1996, and such corporation has in effect on October 13, 1995, a binding contract for the acquisition of assets to be used in, or the sale of property to be produced in, such trade or business. For example, if a corporation has in effect on October 13, 1995, binding contracts for the lease of a facility and the purchase of machinery to be used in a manufacturing business in a possession and if the corporation begins actively conducting that manufacturing business in the possession before January 1, 1996, that corporation is an existing credit claimant. A change in the ownership of a corporation will not affect its status as an existing credit claimant.

In determining whether a corporation has added a substantial new line of business, the conferees intend that principles similar to those reflected in Treas. Reg. section 1.7704–2(d) (relating to the transition rules for existing publicly traded partnerships) will apply. For example, a corporation that modifies its current production methods, expands existing facilities, or adds new facilities to support the production of its current product lines and products within the same four-digit Industry Number Standard Industrial Classification Code (Industry SIC Code) will not be considered to have added a substantial new line of business. In this regard, the conferees intend that the fact that a business which is added is assigned a different four-digit Industry SIC Code than is assigned to an existing business of the corporation will not automatically cause the corporation to be considered to have added a new line of business. For example, a pharmaceutical corporation that begins manufacturing a new drug will not be considered to have added a new line of business. Moreover, a pharmaceutical corporation that begins to manufacture a complete product from the bulk active chemical through the finished dosage form, a process that may be assigned two separate four-digit Industry SIC Codes, will not be considered to have added a new line of business even though it was previously engaged in activities that involved only a portion of the entire manufacturing process from bulk chemicals to finished dosages.

A special transition rule applies to the section 936 credit with respect to operations in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Income attributable to operations in these possessions is not taken into account in computing the income cap described above. A corporation is considered to be an existing credit claimant with respect to one of these possessions if the corporation is an existing credit claimant and is engaged in the active conduct of a trade or business within such possession on October 13, 1995 (or is treated as so engaged under the binding contract rule described above). For any taxable year beginning after December 31, 1995, a corporation that is not an existing credit claimant with respect to one of these possessions for such year is not entitled to the section 936 credit with respect to operations in such possession. For any taxable year beginning after December 31, 1995, and before January 1, 2006, a corporation that is an existing credit claimant with respect to one of these possessions for such year continues to determine its section 936 credit with respect to operations in such possession as under present law. For taxable years beginning in 2006 and thereafter, the section 936 credit with respect to operations in Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands is eliminated.

6. CORPORATE ACCOUNTING—REFORM OF INCOME FORECAST METHOD (SEC. 13604 OF THE HOUSE BILL AND SEC. 12806 OF THE SENATE AMENDMENT)

Present law

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through allowances for depreciation or amortization. The cost of a film, video tape, or similar property that is produced by the taxpayer or is acquired on a "stand-alone" basis by the taxpayer may not be recovered pursuant to either the general depreciation provisions of section 168 or the intangible amortization provisions of section 197. The cost of such property may be depreciated under the "income forecast" method. The income forecast method also has been held to be applicable for computing depreciation deductions for television shows, books, patents, master sound recordings and video games.

Under the income forecast method, the depreciation deduction for a taxable year for a property is determined by multiplying the cost of the property (less estimated salvage value) by a fraction, the numerator of which is the income generated by the property during the year and the denominator of which is the total forecasted or estimated income to be derived from the property during its useful life. The total forecasted or estimated income to be derived from a property is to be based on the conditions known to exist at the end of the period for which depreciation is claimed. This estimate can be revised upward or downward at the end of a subsequent taxable period based on additional information that becomes available after the last prior estimate. These revisions, however, do not affect the amount of depreciation claimed in a prior taxable year.

In the case of a film, income to be taken into account under the income forecast method means income from the film less the expense of distributing the film, including estimated income from foreign distribution or other exploitation of the film. In the case of a motion picture released for theatrical exhibition, income does not include estimated income from future television exhibition of the film (unless an arrangement for domestic television exhibition has been entered into before the film has been depreciated to its reasonable salvage value). In the case of a series or a motion picture produced for television exhibition, income does not include estimated income from domestic syndication of the series or the film (unless an arrangement for syndication has been entered into before the series or film has been depreciated to its reasonable salvage value). The Internal Revenue Service also has ruled that income does not include net merchandising revenue received from the exploitation of film characters.

House bill

The House bill makes several amendments to the income forecast method of determining depreciation deductions.

First, the House bill provides that income to be taken into account under the income forecast method includes all estimated income derived from use of the property. In the case of a film, television show, or similar property, such income includes, but would not necessarily be limited to, income from foreign and domestic theatrical, television, and other releases and syndications; video tape releases, sales, rentals, and syndications; and the exploitation of film or program characters, prints, scripts, and scores. Pursuant to a special rule, if a taxpayer produces a television series and initially does not anticipate syndicating the episodes from the series, the forecasted income for the episodes of the first three years of the series need not take into account any future syndication fees (unless the taxpayer reasonably anticipates syndicating such episodes during such period).

In addition, the cost of property subject to depreciation only includes amounts that satisfy the economic performance standard of section 461(h). Any costs that are taken into account after the property is placed in service are treated as a separate piece of property to the extent (1) such amounts are significant and are expected to give rise to a significant increase in the income from the property that was not included in the estimated income from the property, or (2) such costs are incurred more than 10 years after the property was placed in service. Except as provided in regulations, any costs that are not recovered by the end of the tenth taxable year after the property was placed in service may be taken into account as depreciation in such year.

Further, taxpayers that claim depreciation deductions under the income forecast method are required to pay (or would receive) interest based on the recalculation of depreciation under a "look-back" method. The "look-back" method is applied in any "recomputation year" by: (1) comparing depreciation deductions that had been claimed in prior periods to depreciation deductions that would have been claimed had the taxpayer used actual, rather than estimated, total income from the property; (2) determining the hypothetical overpayment or underpayment of tax based on this recalculated depreciation; and (3) applying the overpayment rate of section 6621. Except as provided in regulations, a "recomputation year" would be the third and tenth taxable year after the taxable year the property was placed in service unless the actual income from the property for each taxable year ending with or before the close of such years was within 10 percent of the estimated income from the property for such years. The Secretary of the Treasury has the authority to allow a taxpayer to delay the initial application of the look-back method where the taxpayer may be expected to have significant income from the property after the third taxable year after the taxable year the property was placed in service (e.g., the Treasury Secretary may exercise such authority where the depreciable life of the property is expected to be longer than three years). In applying the look-back method, any cost that is taken into account after the property was placed in service may be taken into account by discounting (using the Federal mid-term rate determined under sec. 1274(d) as of the time the costs were taken into account) such cost to its value as of the date the property was placed in service. Property with an adjusted basis of $100,000 or less when the property was placed in service is not subject to the look-back method.

Effective date.—The provision is effective for property placed in service after September 13, 1995, unless placed in service pursuant to a binding written contract in effect before such date and all times thereafter.

Senate amendment

The Senate amendment follows the House bill, with certain modifications.

First, the Senate amendment provides that estimated income to be taken into account under the income forecast method includes all income earned in connection with the property before the close of the tenth taxable year following the taxable year in which the property was placed in service. This 11-year rule also will apply for purposes of the look-back method.

Second, income from the exploitation of characters is expected to be limited to income from licensing and similar agreements with third parties and sales of tangible property incorporating such characters.

Third, the special rule that applies to the syndication of a television series will apply such that the forecasted income for the episodes of the first three years of the series need not take into account any future syndication fees (unless the taxpayer has an arrangement to syndicate such episodes during such period).

Fourth, the Senate amendment clarifies the application of the economic performance standard of section 461(h).

Effective date.—Same as the House bill.

Conference agreement

The conference agreement follows the Senate amendment, with the following modifications.

The conference agreement provides that estimated income to be taken into account under the income forecast method includes all income earned before the close of the tenth taxable year following the taxable year in which the property was placed in service in connection with the ultimate use of the property by, or the ultimate sale of merchandise to, unrelated parties (as defined in sec. 267(b)). This rule also will apply for purposes of the look-back method. The conferees wish to clarify that the Secretary of the Treasury has the authority to issue regulations that provide anti-abuse rules to address the improper timing of earnings.

The conferees also wish to clarify that income earned by a taxpayer in connection with a property subject to the income forecast method does not include income earned from a related party. However, certain income earned by the related party from unrelated persons in connection with the property must be taken into account by the taxpayer. For example, if a taxpayer licenses the use of property subject to the income forecast method to a member of the taxpayer's affiliated group and such member sublicenses similar rights to an unrelated third party, the licensing agreement between the affiliated members would be ignored, and the sublicensing agreement with the unrelated third party would be taken into account, for purposes of applying the income forecast method to the taxpayer's property. In addition, the conferees wish to clarify that, for purposes of the income forecast method, the Secretary of the Treasury has the authority to allocate properly income under section 482 or any other applicable present-law provision with respect to agreements, arrangements, or transactions between the taxpayer and any other related parties.

Further, the conferees wish to clarify that in applying the economic performance rules of section 461(h) in determining the cost of property subject to the income forecast method, the recurring item exception of section 461(h)(3) shall apply in a manner similar to the way such exception applies under present law. Thus, expenditures that relate to an item of property that are incurred in the taxable year following the taxable year in which the property is placed in service may be taken into account in the year the property is placed in service to the extent such expenditures meet the recurring item exception for such year.

7. REPEAL 50-PERCENT INTEREST INCOME EXCLUSION FOR FINANCIAL INSTITUTION LOANS TO ESOPS (SEC. 12807 OF THE SENATE AMENDMENT)

Present law

A bank, insurance company, regulated investment company, or a corporation actively engaged in the business of lending money may generally exclude from gross income 50 percent of interest received on an ESOP loan (sec. 133). The 50-percent interest exclusion only applies if: (1) immediately after the acquisition of securities with the loan proceeds, the ESOP owns more than 50 percent of the outstanding stock or more than 50 percent of the total value of all outstanding stock of the corporation; (2) the ESOP loan term will not exceed 15 years; and (3) the ESOP provides for full pass-through voting to participants on all allocated shares acquired or transferred in connection with the loan.

House bill

No provision.

Senate amendment

The Senate amendment repeals the 50-percent interest exclusion with respect to ESOP loans.

Effective date.—The provision generally is effective with respect to loans made after October 13, 1995. The repeal of the 50-percent interest exclusion does not apply to the refinancing of an ESOP loan originally made on or before October 13, 1995, provided: (1) such refinancing loan otherwise meets the requirements of section 133 in effect on or before October 13, 1995; (2) the outstanding principal amount of the loan is not increased; and (3) the term of the refinancing loan does not extend beyond the term of the original ESOP loan.

Conference agreement

The conference agreement follows the Senate amendment.

8. CORPORATE PENSION TRANSFERS (SEC. 13607 OF THE HOUSE BILL)

Present law

In general

Under present law, defined benefit pension plan assets generally may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities. Any assets that revert to the employer upon such termination are includible in the gross income of the employer and subject to an excise tax. The rate of the excise tax generally is 20 percent and is increased to 50 percent unless the employer maintains a replacement plan or makes certain benefit increases in connection with the plan termination.

Transfers from ongoing plans

Under section 420 of the Code and under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") , employers may transfer excess assets in an overfunded defined benefit pension plan (other than a multiemployer plan) to pay certain retiree health liabilities. The assets transferred are not includible in the gross income of the employer and are not subject to the excise tax on reversions. The employer is not entitled to deduct retiree health benefits paid with transferred assets. Any transferred amounts not used for retiree health benefits for the year of transfer are required to be returned to the pension plan (with earnings). Returned amounts are not includible in income and are subject to the 20-percent excise tax.

Transfer requirements

A section 420 transfer is subject to a vesting requirement, an asset cushion requirement, and a notice requirement.

Vesting requirement

Under the vesting requirement, the accrued retirement benefits of plan participants (including participants who separated from service during the 1-year period ending on the date of transfer) must be nonforfeitable as if the plan terminated immediately before the transfer.

Asset cushion requirement

Under the asset cushion requirement, excess assets are defined to be the excess of the value of plan assets over the greater of (1) the plan's full funding limit, or (2) 125 percent of current liability. Excess assets are determined as of the most recent plan valuation date preceding the transfer. Thus, a transfer can only be made from a plan that is at least at the full funding limit and to which deductible employer contributions can no longer be made.

Notice requirement

An employer is required to notify plan participants 60 days before a transfer occurs.

Expiration of provision

Section 420 was originally adopted for a 5-year period, through 1995. It was extended in the implementing legislation for the General Agreement on Tariffs and Trade ("GATT") for an additional 5 years, through 2000.

House bill

Transfers from ongoing plans

Under the House bill, section 420 is expanded to permit a qualified transfer of excess assets from a defined benefit pension plan (other than a multiemployer plan) to the employer, without limitation on the use of the excess assets. Amounts transferred are includible in the gross income of the employer and generally subject to a 6.5 percent excise tax. No excise tax applies in the case of transfers occurring before July 1, 1996.

Transfer requirements

Vesting requirement

Same as present law.

Asset cushion requirement

Same as present law, except that excess assets are determined as of whichever of the following dates results in a lower value of excess assets: (1) January 1, 1995, or the last plan valuation date preceding January 1, 1995, or (2) the most recent plan valuation date preceding the transfer.

Notice requirement

Same as present law.

Expiration of provision

Same as present law.

Effective date

January 1, 1995.

Senate amendment

No provision. (However, the Senate Finance Committee adopted a proposal similar to, but more limited than, the House bill. Under that proposal, transfers of excess pension assets could have been made to pay for qualified retirement benefits, accident and health benefits, disability benefits, educational assistance, and dependent care assistance (i.e., broad-based ERISA-covered plans). The amount transferred would have been includible in the gross income of the employer. No excise tax would have applied. The present-law asset cushion would have applied. The proposal would have been effective with respect to amounts transferred on or after the date of enactment in taxable years beginning before January 1, 2002. The proposal was deleted by a Senate floor amendment.)

Conference agreement

In general

The conference agreement follows the House bill, with several modifications. Under the conference agreement, section 420 is expanded to permit a transfer of excess assets from a defined benefit pension plan (other than a multiemployer plan) to pay for certain employee benefits that are provided to a broad group of employees and regulated under ERISA and the Internal Revenue Code. The amount transferred is includible in the gross income of the employer, but is not subject to the excise tax on reversions. The conference agreement modifies the definition of excess assets, both for purposes of transfers under present-law section 420, as well as for purposes of the transfers allowed under the provision. The conference agreement also provides that an employer cannot make a transfer under the provision or present law if the employer has filed or has had filed against it (as of the date of transfer) a petition seeking liquidation in bankruptcy under title 11 of the U.S. Code, or under similar State or Federal law. The modifications to section 420 are not intended to affect the ability under present law to transfer assets within a defined benefit pension plan under section 414(k).

Transfer requirements

Vesting requirement

Same as the House bill.

Asset cushion requirement

The conference agreement modifies the asset cushion requirement both with respect to transfers under present-law section 420, as well as with respect to the expanded transfers under the provision. Under the provision, excess assets are defined as the excess of the value of plan assets over the greater of (1) 125 percent of termination liability, or (2) the plan's accrued liability. Accrued liability is determined as under the full-funding limitation (without regard to the 150 percent of current liability cap). Termination liability is generally defined as under section 414(l) of the Code. However, for this purpose, the actuarial assumptions used are those used by the Pension Benefit Guaranty Corporation ("PBGC") for single-employer plan termination purposes under title IV of ERISA. It is expected that the PBGC will continue to calculate its termination liability assumptions under its current methodology. Excess assets are determined as of the date of transfer.

Notice requirement

Same as present law.

Use of excess assets

The total amount of excess pension assets which can be transferred during any year cannot exceed the amount the employer would be able to deduct for the year of transfer (determined on a controlled group basis) for qualified employee benefits. Qualified employee benefits are defined as qualified retirement plan benefits, accident and health benefits, disability benefits, educational assistance, and dependent care assistance. For example, under the conference agreement, excess pension assets can be transferred from an overfunded pension plan maintained by an employer to an underfunded pension plan maintained by the same employer.

Transferred amounts (and income thereon) that are not used to pay for qualified employee benefits for the year of transfer must be returned to the pension plan. Income on returned amounts is calculated using the short-term applicable Federal rate. Amounts returned are not includible in the gross income of the employer, but are subject to the 20-percent excise tax on reversions. No deduction is allowed with respect to returned amounts (and income thereon).

Expiration of provision

Transfers for qualified employee benefits cannot be made in taxable years beginning after December 31, 2001.

Effective date

The provision is effective with respect to transfers on and after the date of enactment, except that the changes with respect to transfers under present-law section 420 are effective with respect to transfers occurring after December 31, 1995.

9. MODIFY EXCLUSION OF DAMAGES RECEIVED ON ACCOUNT OF PERSONAL INJURY OR SICKNESS (SEC. 13611 OF THE HOUSE BILL AND SEC. 12811 OF THE SENATE AMENDMENT)

Present law

Under present law, gross income does not include any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injury or sickness (sec. 104(a)(2)).

The exclusion from gross income of damages received on account of personal injury or sickness specifically does not apply to punitive damages received in connection with a case not involving physical injury or sickness. Courts presently differ as to whether the exclusion applies to punitive damages received in connection with a case involving a physical injury or physical sickness. Certain States provide that, in the case of claims under a wrongful death statute, only punitive damages may be awarded.

Courts have interpreted the exclusion from gross income of damages received on account of personal injury or sickness broadly in some cases to cover awards for personal injury that do not relate to a physical injury or sickness. For example, some courts have held that the exclusion applies to damages in cases involving certain forms of employment discrimination and injury to reputation where there is no physical injury or sickness. The damages received in these cases generally consist of back pay and other awards intended to compensate the claimant for lost wages or lost profits. The Supreme Court recently held that damages received based on a claim under the Age Discrimination in Employment Act could not be excluded from income.[67] In light of the Supreme Court decision, the Internal Revenue Service has suspended existing guidance on the tax treatment of damages received on account of other forms of employment discrimination.

House bill

Include in income all punitive damages

The House bill provides that the exclusion from gross income does not apply to any punitive damages received on account of personal injury or sickness whether or not related to a physical injury or physical sickness. The House bill intends no inference as to the application of the exclusion to punitive damages received prior to the effective date of the bill in connection with a case involving a physical injury or physical sickness.

Include in income damage recoveries for nonphysical injuries

The House bill provides that the exclusion from gross income only applies to damages received on account of a personal physical injury or physical sickness. If an action has its origin in a physical injury or physical sickness, then all damages (other than punitive damages) that flow therefrom are treated as payments received on account of physical injury or physical sickness whether or not the recipient of the damages is the injured party. For example, damages (other than punitive damages) received by an individual on account of a claim for loss of consortium due to the physical injury or physical sickness of such individual's spouse are excludable from gross income. In addition, damages (other than punitive damages) received on account of a claim of wrongful death continue to be excludable from taxable income as under present law.

The House bill also specifically provides that emotional distress is not considered a physical injury or physical sickness. Thus, the exclusion from gross income does not apply to any damages received (other than for medical expenses as discussed below) based on a claim of employment discrimination or injury to reputation accompanied by a claim of emotional distress. Because all damages received on account of physical injury or physical sickness are excludable from gross income, the exclusion from gross income does apply to any damages received based on a claim of emotional distress that is attributable to a physical injury or physical sickness. In addition, the exclusion from gross income specifically does apply

[67] *Schleier* v. *Commissioner*, 115 S. Ct. 2159 (1995).

to the amount of damages received that is not in excess of the amount paid for medical care attributable to emotional distress.

Effective date.—The provisions generally are effective with respect to amounts received after December 31, 1995. The provisions do not apply to amounts received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

Senate amendment

Same as the House bill, except that the exclusion from gross income applies to punitive damages received in a wrongful death action, provided that the applicable State law (as in effect on September 13, 1995 without regard to subsequent modification) provides, or has been construed to provide by a court decision issued on or before such date, that only punitive damages may be awarded in a wrongful death action.

Conference agreement

The conference agreement follows the Senate amendment, except the conference agreement clarifies that the special rule contained in the Senate amendment pertaining to punitive damages received in a wrongful death action only applies if the punitive damages received would have been excludable from gross income under the law in effect before February 1, 1996.

10. REPORTING OF CERTAIN PAYMENTS MADE TO ATTORNEYS (SEC. 13612 OF THE HOUSE BILL AND SEC. 12812 OF THE SENATE AMENDMENT)

Present law

Information reporting is required by persons engaged in a trade or business and making payments in the course of that trade or business of "rent, salaries, wages, . . . or other fixed or determinable gains, profits, and income" (Code sec. 6041(a)). Treas. Reg. sec. 1.6041–1(d)(2) provides that attorney's fees are required to be reported if they are paid by a person in a trade or business in the course of a trade or business. Reporting is required to be done on Form 1099-Misc. If, on the other hand, the payment is a gross amount and it is not known what portion is the attorney's fee, no reporting is required on any portion of the payment.

House bill

The House bill requires gross proceeds reporting on all payments to attorneys made by a trade or business in the course of that trade or business. It is anticipated that gross proceeds reporting would be required on Form 1099–B (currently used by brokers to report gross proceeds). The only exception to this new reporting requirement is for any payments reported on either Form 1099-Misc under section 6041 (reports of payment of income) or on Form W–2 under section 6051 (payments of wages).

In addition, the present exception in the regulations exempting from reporting any payments made to corporations will not apply to payments made to attorneys. Treas. Reg. sec. 1.6041–3(c) exempts payments to corporations generally (although payments to most corporations providing medical services must be reported). Reporting is required under both Code sections 6041 and 6045 (as proposed) for payments to corporations that provide legal services. The exception of Treas. Reg. sec. 1.6041–3(g) exempting from reporting payments of salaries or profits paid or distributed by a partnership to the individual partners will continue to apply to both sections (since these amounts are required to reported on Form K–1).

Effective date.—The provision is effective for payments made after December 31, 1995. Consequently, the first information reports will be filed with the IRS (and copies will be provided to recipients of the payments) in 1997, with respect to payments made in 1996.

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, with several clarifications. First, the conferees clarify that the provision applies to payments made to attorneys regardless of whether the attorney is the exclusive payee. Second, the conferees clarify that payments to law firms are payments to attorneys, and therefore are subject to this reporting provision. Third, the conferees clarify that attorneys must promptly supply their TINs to persons required to file these information reports, pursuant to section 6109. Failure to do so could result in the attorney being subject to penalty under section 6723 and the payments being subject to backup withholding under section 3406. Fourth, the conferees clarify their intent that the IRS administer this provision so that there is no overlap between reporting under section 6041 and reporting under section 6045. For example, if two payments are simultaneously made to an attorney, one of which represents the attorney's fee and the second of which represents the settlement with the attorney's client, the first payment will be reported under section 6041 and the second payment will not be reported under either section 6041 or section 6045, since it is known that the entire payment represents the settlement with the client (and therefore no portion of it represents income to the attorney).

Effective date.—The provision is effective for payments made after December 31, 1996. Consequently, the first information reports will be filed with the IRS (and copies will be provided to recipients of the payments) in 1998, with respect to payments made in 1997.

11. EXPATRIATION TAX PROVISIONS (SECS. 13616–13618 OF THE HOUSE BILL AND SECS. 12441–12442 OF THE SENATE AMENDMENT)

Present law

Individuals who relinquish U.S. citizenship with a principal purpose of avoiding U.S. taxes are subject to special tax provisions for 10 years after expatriation. The determination of who is a U.S. citizen for tax purposes, and when such citizenship is lost, is governed by the provisions of the Immigration and Nationality Act, 8 U.S.C. section 1401, et. seq.

An individual who relinquishes his U.S. citizenship with a principal purpose of avoiding U.S. taxes is subject to tax on his or her U.S. source income at the rates applicable to U.S. citizens, rather than the rates applicable to other non-resident aliens, for 10 years after expatriation. In addition, the scope of items treated as U.S. source income for this purpose is broader than those items generally considered to be U.S. source income. For example, gains on the sale of personal property located in the United States and gains on the sale or exchange of stock or securities issued by U.S. persons are treated as U.S. source income. This alternative method of income taxation applies only if it results in a higher U.S. tax liability.

Rules applicable in the estate and gift tax contexts expand the categories of items that are subject to the gift and estate taxes in the case of a U.S. citizen who relinquished citizenship with a principal purpose of avoiding U.S. taxes within the 10-year period ending on the date of the transfer. For example, U.S. property held through a foreign corporation controlled by such individual and related persons is included in his or her estate and gifts of U.S.-situs intangible property by such individual are subject to the gift tax.

House bill

Overview

The House bill expands and substantially strengthens in several ways the present-law provisions that subject U.S. citizens who lose their citizenship for tax avoidance purposes to special tax rules for 10 years after such loss of citizenship (secs. 877, 2107, and 2501(a)(3)). First, the House bill extends the expatriation tax provisions to apply not only to U.S. citizens who lose their citizenship but also to certain long-term residents of the United States whose U.S. residency is terminated. Second, the House bill subjects certain individuals to the expatriation tax provisions without inquiry as to their motive for losing their U.S. citizenship or residency, but allows certain categories of citizens to show an absence of tax-avoidance motives if they request a ruling from the Secretary of the Treasury as to whether the loss of citizenship had a principal purpose of tax avoidance. Third, the House bill expands the categories of income and gains that are treated as U.S. source (and therefore subject to U.S. income tax under section 877) if earned by an individual who is subject to the expatriation tax provisions and includes provisions designed to eliminate the ability to engage in certain transactions that under current law partially or completely circumvent the 10-year reach of section 877. Further, the House bill provides relief from double taxation in circumstances where another country imposes tax on items that would be subject to U.S. tax under the expatriation tax provisions.

The House bill also contains provisions to enhance compliance with the expatriation tax provisions. The House bill imposes information reporting obligations on U.S. citizens who lose their citizenship and long-term residents whose U.S. residency is terminated at the time of expatriation. In addition, the House bill directs the

Treasury Department to undertake a study regarding compliance by individuals living abroad with their U.S. tax reporting obligations and to make recommendations with respect to improving such compliance.

Individuals covered

The present-law expatriation tax provisions apply only to certain U.S. citizens who lose their citizenship. The House bill extends these expatriation tax provisions to apply also to long-term residents of the United States whose U.S. residency is terminated. For this purpose, a long-term resident is any individual who was a lawful permanent resident of the United States for at least 8 out of the 15 taxable years ending with the year in which such termination occurs. In applying this 8-year test, an individual is not considered to be a lawful permanent resident for any year in which the individual is taxed as a resident of another country under a treaty tie-breaker rule. An individual's U.S. residency is considered to be terminated when either the individual ceases to be a lawful permanent resident pursuant to section 7701(b)(6) (i.e., the individual loses his or her green-card status) or the individual is treated as a resident of another country under a tie-breaker provision of a tax treaty (and the individual does not elect to waive the benefits of such treaty). Furthermore, a long-term resident may elect to use the fair market value basis of property on the date the individual became a U.S. resident (rather than the property's historical basis) to determine the amount of gain subject to the expatriation tax provisions if the asset is sold within the 10-year period.

Under present law, the expatriation tax provisions are applicable to a U.S. citizen who loses his or her citizenship unless such loss did not have as a principal purpose the avoidance of taxes. Under the House bill, U.S. citizens who lose their citizenship and long-term residents whose U.S. residency is terminated are generally treated as having lost such citizenship or terminated such residency with a principal purpose of the avoidance of taxes if either: (1) the individual's average annual U.S. Federal income tax liability for the 5 taxable years ending before the date of such loss or termination is greater than $100,000 (the "tax liability test"), or (2) the individual's net worth as of the date of such loss or termination is $500,000 or more (the "net worth test"). The dollar amount thresholds contained in the tax liability test and the net worth test are indexed for inflation in the case of a loss of citizenship or termination of residency occurring in any calendar year after 1996. An individual who falls below the thresholds specified in both the tax liability test and the net worth test is subject to the expatriation tax provisions unless the individual's loss of citizenship or termination of residency did not have as a principal purpose the avoidance of tax (as under present law in the case of U.S. citizens).

A U.S. citizen, who loses his or her citizenship and who satisfies either the tax liability test or the net worth test, is not subject to the expatriation tax provisions if such individual can demonstrate that he or she did not have a principal purpose of tax avoidance and the individual is within one of the following categories: (1) the individual was born with dual citizenship and retains only the non-U.S. citizenship; (2) the individual becomes a citizen of the country in which the individual, the individual's spouse, or one of the individual's parents, was born; (3) the individual was present in the United States for no more than 30 days during any year in the 10-year period immediately preceding the date of his or her loss of citizenship; (4) the individual relinquishes his or her citizenship before reaching age 18½; or (5) any other category of individuals prescribed by Treasury regulations. In all of these situations, the individual would have been subject to tax on his or her worldwide income (as are all U.S. citizens) until the time of expatriation. In order to qualify for one of these exceptions, the former U.S. citizen must, within one year from the date of loss of citizenship, submit a ruling request for a determination by the Secretary of the Treasury as to whether such loss had as one of its principal purposes the avoidance of taxes. A former U.S. citizen who submits such a ruling request is entitled to challenge an adverse determination by the Secretary of the Treasury. However, a former U.S. citizen who fails to submit a timely ruling request is not eligible for these exceptions. It is expected that in making a determination as to the presence of a principal purpose of tax avoidance, the Secretary of the Treasury will take into account factors such as the substantiality of the former citizen's ties to the United States (including ownership of U.S. assets) prior to expatriation, the retention of U.S. citizenship by the former citizen's spouse, and the extent to which the former citizen resides in a country that imposes little or no tax.

The foregoing exceptions are not available to long-term residents whose U.S. residency is terminated. However, the House bill authorizes the Secretary of the Treasury to prescribe regulations to exempt certain categories of long-term residents from the House bill's provisions.

Items subject to section 877

Under section 877, an individual covered by the expatriation tax provisions is subject to tax on U.S. source income and gains for a 10-year period after expatriation at the graduated rates applicable to U.S. citizens.[68] The tax under section 877 applies to U.S. source income and gains of the individual for the 10-year period, without regard to whether the property giving rise to such income or gains was acquired before or after the date the individual became subject to the expatriation tax provisions. For example, a U.S. citizen who inherits an appreciated asset immediately before losing citizenship and disposes of the asset immediately after such loss would not recognize any taxable gain on such disposition (because of the date of death fair market value basis accorded to inherited assets), but the individual would continue to be subject to

[68] Under present law, all nonresident aliens (including expatriates) are subject to U.S. income tax at graduated rates on certain types of income. Such income includes income effectively connected with a U.S. trade or business and gains from the disposition of interests in U.S. real property. For example, compensation (including deferred compensation) paid with respect to services performed in the United States is subject to such tax. Thus, under current law, a U.S. citizen who earns a stock option while employed in the United States and delays the exercise of such option until after such individual loses his or her citizenship is subject to U.S. tax on the compensation income recognized upon exercise of the stock option (even if the stock received upon the exercise is stock in foreign corporation).

tax under section 877 on the income or gain derived from any U.S. property acquired with the proceeds from such disposition.

In addition, section 877 currently recharacterizes as U.S. source income certain gains of individuals who are subject to the expatriation tax provisions, thereby subjecting such individuals to U.S. income tax on such gains. Under this rule, gain on the sale or exchange of stock of a U.S. corporation or debt of a U.S. person is treated as U.S. source income. In this regard, under current law, the substitution of a foreign obligor for a U.S. obligor is generally treated as a taxable exchange of the debt instrument, and therefore any gain on such exchange is subject to tax under section 877. The House bill extends this recharacterization to income and gains derived from property obtained in certain transactions on which gain or loss is not recognized under present law. An individual covered by section 877 who exchanges property that would produce U.S. source income for property that would produce foreign source income is required to recognize immediately as U.S. source income any gain on such exchange (determined as if the property had been sold for its fair market value on such date). To the extent gain is recognized under this provision, the property would be accorded the step-up in basis provided under current law. This rule requiring immediate gain recognition does not apply if the individual enters into an agreement with the Secretary of the Treasury specifying that any income or gains derived from the property received in the exchange during the 10-year period after the loss of citizenship (or termination of U.S. residency, as applicable) would be treated as U.S. source income. Such a gain recognition agreement terminates if the property transferred in the exchange is disposed of by the acquiror, and any gain that had not been recognized by reason of such agreement is recognized as U.S. source as of such date. It is expected that a gain recognition agreement would be entered into not later than the due date for the tax return for the year of the exchange. In this regard, the Secretary of the Treasury is authorized to issue regulations providing similar treatment for nonrecognition transactions that occur within 5 years immediately prior to the date of loss of citizenship (or termination of U.S. residency, as applicable).

The Secretary of the Treasury is authorized to issue regulations to treat removal of tangible personal property from the United States, and other circumstances that result in a conversion of U.S. source income to foreign source income without recognition of any unrealized gain, as exchanges for purposes of computing gain subject to section 877. The taxpayer may defer the recognition of the gain if he or she enters into a gain recognition agreement as described above. For example, a former citizen who removes appreciated artwork that he or she owns from the United States could be subject to immediate tax on the appreciation under this provision unless the individual enters into a gain recognition agreement.

The foregoing rules regarding the treatment under section 877 of nonrecognition transactions are illustrated by the following examples: Ms. A loses her U.S. citizenship on January 1, 1996, and is subject to section 877. On June 30, 1997, Ms. A transfers the stock she owns in a U.S. corporation, USCo, to a wholly-owned foreign corporation, FCo, in a transaction that qualifies for tax-free treatment under section 351. At the time of such transfer, A's basis in the stock of USCo is $100,000 and the fair market value of the stock is $150,000. Under present law, Ms. A. would not be subject to U.S. tax on the $50,000 of gain realized on the exchange. Moreover, Ms. A would not be subject to U.S. tax on any distribution of the proceeds from a subsequent disposition of the USCo stock by FCo. Under the House bill, if Ms. A does not enter into a gain recognition agreement with the Secretary of the Treasury, Ms. A would be deemed to have sold the USCo stock for $150,000 on the date of the transfer, and would be subject to U.S. tax in 1997 on the $50,000 of gain realized. Alternatively, if Ms. A enters into a gain recognition agreement, she would not be required to recognize for U.S. tax purposes in 1997 the $50,000 of gain realized upon the transfer of the USCo stock to FCo. However, under the gain recognition agreement, for the 10-year period ending on December 31, 2005, any income (e.g., dividends) or gain with respect to the FCo stock would be treated as U.S. source, and therefore Ms. A would be subject to tax on such income or gain under section 877. If FCo disposes of the USCo stock on January 1, 2002, Ms. A's gain recognition agreement would terminate on such date, and Ms. A would be required to recognize as U.S. source income at that time the $50,000 of gain that she previously deferred under the gain recognition agreement. (The amount of gain required to be recognized by Ms. A in this situation would not be affected by any changes in the value of the USCo stock since her June 30, 1997 transfer of such stock to FCo.)

The House bill also extends the recharacterization rules of section 877 to treat as U.S. source any income and gains derived from stock in a foreign corporation if the individual losing citizenship or terminating residency owns, directly or indirectly, more than 50 percent of the vote or value of the stock of the corporation on the date of such loss or termination or at any time during the 2 years preceding such date. Such income and gains are recharacterized as U.S. source only to the extent of the amount of earnings and profits attributable to such stock earned or accumulated prior to the date of loss of citizenship (or termination of residency, as applicable) and while such ownership requirement is satisfied.

The following example illustrates this rule: Mr. B loses his U.S. citizenship on July 1, 1996 and is subject to section 877. Mr. B has owned all of the stock of a foreign corporation, FCo, since its incorporation in 1991. As of FCo's December 31, 1995 year-end, FCo has accumulated earnings and profits of $500,000. FCo has earnings and profits of $100,000 for 1996 and does not have any subpart F income (as defined in sec. 952). FCo makes a $100,000 distribution to Mr. B in each of 1997 and 1998. On January 1, 1999, Mr. B disposes of all his stock of FCo and realizes $400,000 of gain. Under present law, neither the distributions from FCo nor the gain on the disposition of the FCo stock would be subject to U.S. tax. Under the House bill, the distributions from FCo and the gain on the sale of the stock of FCo would be treated as U.S. source income and would be taxed to Mr. B under section 877, subject to the earnings and profits limitation. For this purpose, the amount of FCo's earnings and profits for 1996 is prorated based on the number of days during 1996 that Mr. B is a U.S. citizen. Thus, the amount of FCo's earnings and profits earned or accumulated before Mr. B's loss of citizenship is $550,000. Accordingly, the $100,000 distributions from FCo in 1997 and 1998 would be treated as U.S. source income taxable to Mr. B under section 877 in such years. In addition, $350,000 of the gain realized from the sale of the stock of FCo in 1999 would be treated as U.S. source income taxable to Mr. B under section 877 in that year.

Special rule for shift in risks of ownership

Section 877 applies to income and gains for the 10-year period following the loss of citizenship (or termination of residency, as applicable). For purposes of applying section 877, the House bill suspends this 10-year period for gains derived from a particular property during any period in which the individual's risk of loss with respect to such property is substantially diminished. For example, Ms. C loses her citizenship on January 1, 1996 and is subject to section 877. On that date Ms. C owns 10,000 shares of stock of a U.S. corporation, USCo, with a value of $1 million. On the same date Ms. C enters into an equity swap with respect to such USCo stock with a 5-year term. Under the transaction, Ms. C will transfer to the counter-party an amount equal to the dividends on the USCo stock and any increase in the value of the USCo stock for the 5-year period. The counter-party will transfer to Ms. C an amount equal to a market rate of interest on $1 million and any decrease in the value of the USCo stock for the same period. Ms. C's risk of loss with respect to the USCo stock is substantially diminished during the 5-year period in which the equity swap is in effect, and therefore, under the House bill, the 10-year period under section 877 is suspended during such period. Accordingly, under the House bill, if Ms. C sells her USCo stock for a gain on January 1, 2010, such gain would be treated as U.S. source income taxable to Ms. C under section 877. Such gain would not be subject to U.S. tax under present law.

Double tax relief

In order to avoid the double taxation of individuals subject to the expatriation tax provisions, the House bill provides a credit against the U.S. tax imposed under such provisions for any foreign income, gift, estate or similar taxes paid with respect to the items subject to such taxation. This credit is available only against the tax imposed solely as a result of the expatriation tax provisions, and is not available to be used to offset any other U.S. tax liability. For example, Mr. D loses his citizenship on January 1, 1996 and is subject to section 877. Mr. D becomes a resident of Country X. During 1996, Mr. D recognizes a $100,000 gain upon the sale of stock a U.S. corporation, USCo. Country X imposes $20,000 tax on this capital gain. But for the double tax relief provision, Mr. D would be subject to tax of $28,000 on this gain under section 877. However, Mr. D's U.S. tax under section 877 would be reduced by the $20,000 of foreign tax paid, and Mr. D's resulting U.S. tax on this gain would be $8,000.

Effect on tax treaties

While it is believed that the expatriation tax provisions, as amended by the House bill, are generally consistent with the underlying principles of income tax treaties to the extent the House bill provides a foreign tax credit for items taxed by another country, it is intended that the purpose of the expatriation tax provisions, as amended, not be defeated by any treaty provision. The Treasury Department is expected to review all outstanding treaties to determine whether the expatriation tax provisions, as revised, potentially conflict with treaty provisions and to eliminate any such potential conflicts through renegotiation of the affected treaties as necessary. Beginning on the tenth anniversary of the enactment of the House bill, any conflicting treaty provisions that remain in force would take precedence over the expatriation tax provisions as revised.

Required information reporting and sharing

Under the House bill, a U.S. citizen who loses his or her citizenship is required to provide a statement to the State Department (or other designated government entity) which includes the individual's social security number, forwarding foreign address, new country of residence and citizenship and, in the case of individuals with a net worth of at least $500,000, a balance sheet. The entity to which such statement is to be provided is required to provide to the Secretary of the Treasury copies of all statements received and the names of individuals who refuse to provide such statements. A long-term resident whose U.S. residency is terminated is required to attach a similar statement to his or her U.S. income tax return for the year of such termination. An individual's failure to provide the required statement results in the imposition of a penalty for each year the failure continues equal to the greater of (1) 5 percent of the individual's expatriation tax liability for such year, or (2) $1,000.

The House bill requires the State Department to provide the Secretary of the Treasury with a copy of each certificate of loss of nationality (CLN) approved by the State Department. Similarly, the House bill requires the agency administering the immigration laws to provide the Secretary of the Treasury with the name of each individual whose status as a lawful permanent resident has been revoked or has been determined to have been abandoned.

Further, the House bill requires the Secretary of the Treasury to publish in the Federal Register the names of all former U.S. citizens from whom it receives the required statements or whose names it receives under the foregoing information-sharing provisions.

Treasury report on tax compliance by U.S. citizens and residents living abroad

The Treasury Department is directed to undertake a study on the tax compliance of U.S. citizens and green-card holders residing outside the United States and to make recommendations regarding the improvement of such compliance. The findings of such study and such recommendations are required to be reported to the

House Committee on Ways and Means and the Senate Committee on Finance within 90 days of the date of enactment.

During the course of the Joint Committee on Taxation staff study on expatriation, a specific issue was identified regarding the difficulty in determining when a U.S. citizen has committed an expatriating act with the requisite intent, and thus no longer has the obligation to continue to pay U.S. taxes on his or her worldwide income due to the fact that the individual is no longer a U.S. citizen. Neither the Immigration and Nationality Act nor any other Federal law requires an individual to request a CLN within a specified amount of time after an expatriating act has been committed, even though the expatriating act terminates the status of the individual as a U.S. citizen for all purposes, including the status of being subject to U.S. tax on worldwide income. Accordingly, it is anticipated that the Treasury report, in evaluating whether improved coordination between executive branch agencies could improve compliance with the requirements of the Internal Revenue Code, will review the process through which the State Department determines when citizenship has been lost, and make recommendations regarding changes to such process to recognize the importance of such date for tax purposes. In particular, it is anticipated that the Treasury Department will explore ways of working with the State Department to insure that the State Department will not issue a CLN confirming the commission of an expatriating act with the requisite intent necessary to terminate citizenship in the absence of adequate evidence of both the occurrence of the expatriating act (e.g., the joining of a foreign army) and the existence of the requisite intent.

Effective date

The expatriation tax provisions as modified by the House bill generally apply to any individual who loses U.S. citizenship on or after February 6, 1995, and any long-term residents whose U.S. residency is terminated on or after June 13, 1995. For citizens, the determination of the date of loss of citizenship remains the same as under present law (i.e., the date of loss of citizenship is the date of the expatriating act). However, a special transition rule applies to individuals who committed an expatriating act within one year prior to February 6, 1995, but had not applied for a CLN as of such date. Such an individual is subject to the expatriation tax provisions as amended by the House bill as of the date of application for the CLN, but is *not* retroactively liable for U.S. income taxes on his or her worldwide income. In order to qualify for the exceptions provided for individuals who fall within one of the specified categories, such individual is required to submit a ruling request within 1 year after the date of enactment of the House bill.

The special transition rule is illustrated by the following example. Mr. E joined a foreign army on October 1, 1994 with the intent to relinquish his U.S. citizenship, but Mr. E does not apply for a CLN until October 1, 1995. Mr. E would be subject to the expatriation tax provisions (as amended) for the 10-year period beginning on October 1, 1995. Moreover, if Mr. E falls within one of the specified categories (i.e., Mr. E is age 18 when he joins the foreign army), in order to qualify for the exception provided for such individuals, Mr. E would be required to submit his ruling request within 1 year after the date of enactment of the House bill. Mr. E would not, however, be liable for U.S. income taxes on his worldwide income for any period after October 1, 1994.

Senate amendment

In general

The Senate amendment replaces the present-law expatriation income tax rules with rules that generally subject certain U.S. citizens who relinquish their U.S. citizenship and certain long-term U.S. residents who relinquish their U.S. residency to tax on the net unrealized gain in their property as if such property were sold for fair market value on the expatriation date. The Senate amendment also imposes information reporting obligations on U.S. citizens who relinquish their citizenship and long-term residents whose U.S. residency is terminated.

Individuals covered

The Senate amendment applies the expatriation tax to certain U.S. citizens and long-term residents who terminate their U.S. citizenship or residency. For this purpose, a long-term resident is any individual who was a lawful permanent resident of the United States for at least 8 out of the 15 taxable years ending with the year in which the termination of residency occurs. In applying this 8-year test, an individual is not considered to be a lawful permanent resident of the United States for any year in which the individual is taxed as a resident of another country under a treaty tie-breaker rule. An individual's U.S. residency is considered to be terminated when either the individual ceases to be a lawful permanent resident pursuant to section 7701(b)(6) (i.e., the individual loses his or her green-card status) or the individual is treated as a resident of another country under a tie-breaker provision of a tax treaty (and the individual does not elect to waive the benefits of such treaty).

The expatriation tax under the Senate amendment applies only to individuals whose average income tax liability or net worth exceeds specified levels. U.S. citizens who lose their citizenship and long-term residents who terminate U.S. residency are subject to the expatriation tax if they meet either of the following tests: (1) the individual's average annual U.S. Federal income tax liability for the 5 taxable years ending before the date of such loss or termination is greater than $100,000, or (2) the individual's net worth as of the date of such loss or termination is $500,000 or more. The dollar amount thresholds contained in these tests are indexed for inflation in the case of a loss of citizenship or termination of residency occurring in any calendar year after 1996.

Exceptions from the expatriation tax under the Senate amendment are provided for individuals in two situations. The first exception applies to an individual who was born with citizenship both in the United States and in another country, provided that (1) as of the date of relinquishment of U.S. citizenship the individual continues to be a citizen of, and is taxed as a resident of, such other country, and (2) the individual was a resident of the United States for no more than 8 out of the 15 taxable years ending with the year in which the relinquishment of U.S. citizenship occurred. The second exception applies to a U.S. citizen who relinquishes citizenship before reaching age 18½, provided that the individual was a resident of the United States for no more than 5 taxable years before such relinquishment.

Deemed sale of property upon expatriation

Under the Senate amendment, individuals who are subject to the expatriation tax generally are treated as having sold all of their property at fair market value immediately prior to the relinquishment of citizenship or termination of residency. Gain or loss from the deemed sale of property is recognized at that time, generally without regard to provisions of the Code that would otherwise provide nonrecognition treatment. The net gain, if any, on the deemed sale of all such property is subject to U.S. tax at such time to the extent it exceeds $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom expatriate).

The deemed sale rule of the Senate amendment generally applies to all property interests held by the individual on the date of relinquishment of citizenship or termination of residency, provided that the gain on such property interest would be includible in the individual's gross income if such property interest were sold for its fair market value on such date. Special rules apply in the case of trust interests (see "Interests in trusts," below). U.S. real property interests, which remain subject to U.S. taxing jurisdiction in the hands of nonresident aliens, generally are excepted from the Senate amendment. An exception also applies to interests in qualified retirement plans and, subject to a limit of $500,000, interests in certain foreign pension plans as prescribed by regulations. The Secretary of the Treasury is authorized to issue regulations exempting other property interests as appropriate. For example, an exclusion may be provided for an interest in a nonqualified compensation plan of a U.S. employer, where payments from such plan to the individual following expatriation would continue to be subject to U.S. withholding tax.

Under the Senate amendment, an individual who is subject to the expatriation tax is required to pay a tentative tax equal to the amount of tax that would be due for a hypothetical short tax year ending on the date the individual relinquished citizenship or terminated residency. Thus, the tentative tax is based on all the income, gain, deductions, loss and credits of the individual for the year through such date, including amounts realized from the deemed sale of property. The tentative tax is due on the 90th day after the date of relinquishment of citizenship or termination of residency.

Deferral of payment of tax

Under the Senate amendment, an individual is permitted to elect to defer payment of the expatriation tax with respect to the deemed sale of any property. Under this election, the expatriation tax with respect to a particular property, plus interest thereon, is due when the property is subsequently disposed of. For this purpose, except as provided in regulations, the disposition of property in a nonrecognition transaction constitutes a disposition. In addition, if an individual holds property until his or her death, the individual is treated as having disposed of the property immediately before death. In order to elect deferral of the expatriation tax, the individual is required to provide adequate security to ensure that the deferred expatriation tax and interest ultimately will be paid. A bond in the amount of the deferred tax and interest constitutes adequate security. Other security mechanisms are also permitted provided that the individual establishes to the satisfaction of the Secretary of the Treasury that the security is adequate. In the event that the security provided with respect to a particular property subsequently becomes inadequate and the individual fails to correct such situation, the deferred expatriation tax and interest with respect to such property will become due. As a further condition to making this election, the individual is required to consent to the waiver of any treaty rights that would preclude the collection of the expatriation tax.

Interests in trusts

In general

Under the Senate amendment, special rules apply to trust interests held by the individual at the time of relinquishment of citizenship or termination of residency. The treatment of trust interests depends upon whether the trust is a qualified trust. For this purpose, a "qualified trust" is a trust that is organized under and governed by U.S. law and that is required by its instruments to have at least one U.S. trustee.

Constructive ownership rules apply to a trust beneficiary that is a corporation, partnership, trust or estate. In such cases, the shareholders, partners or beneficiaries of the entity are deemed to be the direct beneficiaries of the trust for purposes of applying these provisions. In addition, an individual who holds (or who is treated as holding) a trust interest at the time of relinquishment of citizenship or termination of residency is required to disclose on his or her tax return the methodology used to determine his or her interest in the trust, and whether such individual knows (or has reason to know) that any other beneficiary of the trust uses a different method.

Nonqualified trusts

If an individual holds an interest in a trust that is not a qualified trust, a special rule applies for purposes of determining the amount of the expatriation tax due with respect to such trust interest. The individual's interest in the trust is treated as a separate trust consisting of the trust assets allocable to such interest. Such separate trust is treated as having sold its assets as of the date of relinquishment of citizenship or termination of residency and having distributed all proceeds to the individual, and the individual is treated as having recontributed such proceeds to the trust. The individual is subject to the expatriation tax with respect to any net income or gain arising from the deemed distribution from the trust. The election to defer payment is available for the expatriation tax attributable to a nonqualified trust interest.

A beneficiary's interest in a nonqualified trust is determined on the basis of all facts and circumstances. These include the terms of the trust instrument itself, any letter of wishes or similar document, historical patterns of trust distributions, and the role of any trust protector or similar advisor.

Qualified trusts

If the individual has an interest in a qualified trust, a different set of rules applies. Under these rules, the amount of unrealized gain allocable to the individual's trust interest is calculated at the time of expatriation. In determining this amount, all contingencies and discretionary interests are assumed to be resolved in the individual's favor (i.e., the individual is allocated the maximum amount that he or she potentially could receive under the terms of the trust instrument). The expatriation tax imposed on such gains generally is collected when the individual receives distributions from the trust, or, if earlier, upon the individual's death. Interest is charged for the period between the date of expatriation and the date on which the tax is paid.

If an individual has an interest in a qualified trust, the individual is subject to expatriation tax upon the receipt of any distribution from the trust. Such distributions may also be subject to U.S. income tax. For any distribution from a qualified trust made to an individual after he or she has expatriated, expatriation tax is imposed in an amount equal to the amount of the distribution multiplied by the highest tax rate generally applicable to trusts and estates, but in no event will the tax imposed exceed the deferred tax amount with respect to such trust interest. The "deferred tax amount" would be equal to (1) the tax calculated with respect to the unrealized gain allocable to the trust interest at the time of expatriation, (2) increased by interest thereon, and (3) reduced by the tax imposed under this provision with respect to prior trust distributions to the individual.

If an individual's interest in a trust is vested as of the expatriation date (e.g., if the individual's interest in the trust is non-contingent and non-discretionary), the gain allocable to the individual's trust interest is determined based on the trust assets allocable to his or her trust interest. If the individual's interest in the trust is not vested as of the expatriation date (e.g., if the individual's trust interest is a contingent or discretionary interest), the gain allocable to his or her trust interest is determined based on all of the trust assets that could be allocable to his or her trust interest, determined by resolving all contingencies and discretionary powers in the individual's favor. In the case where more than one trust beneficiary is subject to the expatriation tax with respect to trust interests that are not vested, the rules are intended to apply so that the same unrealized gain with respect to assets in the trust is not taxed to both individuals.

If the individual disposes of his or her trust interest, the trust ceases to be a qualified trust, or the individual dies, expatriation tax is imposed as of such date. The amount of such tax equal to the lesser of (1) the tax calculated under the rules for nonqualified trust interests applied as of such date or (2) the deferred tax amount with respect to the trust interest as of such date.

If the individual agrees to waive any treaty rights that would preclude collection of the tax, the tax is imposed under this provision with respect to distributions from a qualified trust to the individual deducted and withheld from distributions. If the individual does not agree to such a waiver of treaty rights, the tax with respect to distributions to the individual is imposed on the trust, the trustee is personally liable therefor, and any other beneficiary of the trust has a right of contribution against such individual with respect to such tax. Similarly, in the case of the tax imposed in connection with an individual's disposition of a trust interest, the individual's death while holding a trust interest or the individual's holding of an interest in a trust that ceases to be qualified, the tax is imposed on the trust, the trustee is personally liable therefor, and any other beneficiary of the trust has a right of contribution against such individual with respect to such tax.

Election to be treated as a U.S. citizen

Under the Senate amendment, an individual is permitted to make an irrevocable election to continue to be taxed as a U.S. citizen with respect to all property that otherwise is covered by the expatriation tax. This election is an "all-or-nothing" election; an individual is not permitted to elect this treatment for some property but not other property. The election, if made, applies to all property that would be subject to the expatriation tax and to any property the basis of which is determined by reference to such property. Under this election, the individual continues to pay U.S. income taxes at the rates applicable to U.S. citizens following expatriation on any income generated by the property and on any gain realized on the disposition of the property, as well as any excise tax imposed with respect to the property (see, e.g., sec. 1491). In addition, the property continues to be subject to U.S. gift, estate, and generation-skipping transfer taxes. However, the amount of any transfer tax so imposed is limited to the amount of income tax that would have been due if the property had been sold for its fair market value immediately before the transfer or death. The $600,000 exclusion provided with respect to the expatriation tax under the Senate amendment is available to reduce the tax imposed by reason of this election. In order to make this election, the taxpayer is required to waive any treaty rights that would preclude the collection of the tax. The individual is also required to provide security to ensure payment of the tax under this election in such form, manner, and amount as the Secretary of the Treasury requires.

Date of relinquishment of citizenship

Under the Senate amendment, an individual is treated as having relinquished U.S. citizenship on the date that the individual first makes known to a U.S. government or consular officer his or her intention to relinquish U.S. citizenship. Thus, a U.S. citizen who relinquishes citizenship by formally renouncing his or her U.S. nationality before a diplomatic or consular officer of the United States is treated as having relinquished citizenship on that date, provided that the renunciation is later confirmed by the issuance of a CLN. A U.S. citizen who furnishes to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act with the requisite interest to relinquish his or her citizenship is treated as having relinquished his or her citizenship on the date the statement is so furnished (regardless of when the expatriating act was performed), provided that the voluntary relinquishment is later confirmed by the issuance of a CLN. If neither of these circumstances exist, the individual is treated as having relinquished citizenship on the date a CLN is issued or a certificate of naturalization is cancelled. The date of relinquishment of citizenship determined under the Senate amendment applies for all tax purposes.

Effect on present-law expatriation provisions

Under the Senate amendment, the present-law income tax provisions with respect to U.S. citizens who expatriate with a principal purpose of avoiding tax (sec. 877) and certain aliens who have a break in residency status (sec. 7701(b)(10)) do apply to U.S. citizens who are treated as relinquishing their citizenship on or after February 6, 1995 or to long-term U.S. residents who terminate their residency on or after such date. The special estate and gift tax provisions with respect to individuals who expatriate with a principal purpose of avoiding tax (secs. 2107 and 2501(a)(3)), however, continue to apply; a credit against the tax imposed solely by reason of such special provisions is allowed for the expatriation tax imposed with respect to the same property.

Treatment of gifts and inheritances from an expatriate

Under the Senate amendment, the exclusion from income provided in section 102 does not apply to the value of any property received by gift or inheritance from an individual who was subject to the expatriation tax (i.e., an individual who relinquished citizenship or terminated residency and to whom the expatriation tax was applicable). Accordingly, a U.S. taxpayer who receives a gift or inheritance from such an individual is required to include the value of such gift or inheritance in gross income and is subject to U.S. income tax on such amount.

Required information reporting and sharing

Under the Senate amendment, an individual who relinquishes citizenship or terminates residency is required to provide a statement which includes the individual's social security number, forwarding foreign address, new country of residence and citizenship and, in the case of individuals with a net worth of at least $500,000, a balance sheet. In the case of a former citizen, such statement is due not later than the date the individual's citizenship is treated as relinquished and is to be provided to the State Department (or other government entity involved in the administration of such relinquishment). The entity to which the statement is to be provided by former citizens is required to provide to the Secretary of the Treasury copies of all statements received and the names of individuals who refuse to provide such statements. In the case of a former long-term resident, the statement is provided to the Secretary of the Treasury with the individual's tax return for the year in which the individual's U.S. residency is terminated. An individual's failure to provide the statement required under this provision results in the imposition of a penalty for each year the failure continues equal to the greater of (1) 5 percent of the individual's expatriation tax liability for such year or (2) $1,000.

The Senate amendment requires the State Department to provide the Secretary of the Treasury with a copy of each CLN approved by the State Department. Similarly, the Senate amendment requires the agency administering the immigration laws to provide the Secretary of the Treasury with the name of each individual whose status as a lawful permanent resident has been revoked or has been determined to have been abandoned.

Further, the Senate amendment requires the Secretary of the Treasury to publish in the Federal Register the names of all former U.S. citizens with respect to whom it receives the required statements or whose names it receives under the foregoing information-sharing provisions.

Effective date

The provision is effective for U.S. citizens whose date of relinquishment of citizenship (as determined under the Senate amendment, see "Date of relinquishment of citizenship" above) occurs on or after February 6, 1995. Similarly, the provision is effective for long-term residents who terminate their U.S. residency on or after February 6, 1995.

U.S. citizens who committed an expatriating act with the requisite intent to relinquish their U.S. citizenship prior to February 6, 1995, but whose date of relinquishment of citizenship (as determined under the Senate amendment) does not occur until after such date, are subject to the expatriation tax under the Senate amendment as of date of relinquishment of citizenship. However, the individual is not subject retroactively to worldwide tax as a U.S. citizen for the period after he or she committed the expatriating act (and therefore ceased being a U.S. citizen for tax purposes under present law). Such an individual continues to be subject to the expatriation tax imposed by present-law section 877 until the individual's date of relinquishment of citizenship (at which time the individual would be subject to the expatriation tax of the Senate amendment). The rules described in this paragraph do not apply to an individual who committed an expatriating act prior to February 6, 1995, but did not do so with the requisite intent to relinquish his or her U.S. citizenship.

The tentative tax is not required to be paid, and the reporting requirements would not be required to be met, until 90 days after the date of enactment. Such provisions apply to all individuals whose date of relinquishment of U.S. citizenship or termination of U.S. residency occurs on or after February 6, 1995.

Conference agreement

The conference agreement follows the House bill with modifications. Under the conference agreement, the expatriation tax provisions apply both to U.S. citizens who lose citizenship on or after February 6, 1995, and to long-term residents whose U.S. residency is terminated on or after February 6, 1995. The information reporting provisions apply to U.S. citizens who lose citizenship and long-term residents whose U.S. residency is terminated on or after February 6, 1995. The conference agreement does not include the provisions of the House bill with respect to the publication of the names of expatriates in the Federal Register and the direction to the Treasury Department to study tax compliance by individuals living abroad.

12. REPEAL ADVANCE REFUNDS OF DIESEL FUEL TAX FOR DIESEL AUTOMOBILES, VANS, AND LIGHT TRUCKS (SEC. 13638 OF THE HOUSE BILL AND SEC. 12831 OF THE SENATE AMENDMENT)

Present law

Excise taxes are imposed on gasoline (11.5 cents per gallon) and diesel fuel (17.5 cents per gallon) to fund the Federal Highway Trust Fund. Before 1985, the gasoline and diesel fuel tax rates were the same. The predominate highway use of diesel fuel is by trucks. In 1984, the diesel excise tax rate was increased above the gasoline tax rate as the revenue offset for a reduction in the annual heavy truck excise tax. Because automobiles, vans, and light trucks did not benefit from the use tax reduction, a provision was enacted allowing first purchasers of model year 1979 and later diesel-powered automobiles, vans, and light trucks a tax credit to offset this increased diesel fuel tax. The credit is $102 for automobiles, and $198 for vans and light trucks.

House bill

The House bill repeals the advance refunds of diesel tax for purchasers of diesel-powered automobiles, vans, and light trucks.

Effective date.—Vehicles purchased after December 31, 1995.

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.

13. REPEAL WINE AND FLAVORS TAX CREDIT (SEC. 12832 OF THE SENATE AMENDMENT)

Present law

Producers of distilled spirits are allowed a tax credit for the alcohol contained in products that are (1) derived from fruit (i.e., "wine") or (2) attributable to certain flavorings.

House bill

No provision.

Senate amendment

The Senate amendment repeals the wine and flavors tax credit (i.e., taxes all alcohol in distilled spirits products at the statutory $13.50-per-proof-gallon rate).

Effective date.—January 1, 1996.

Conference agreement

The conference agreement does not include the Senate amendment.

14. MODIFICATIONS TO THE EXCISE TAX ON OZONE-DEPLETING CHEMICALS (SEC. 12833 OF THE SENATE AMENDMENT)

Present law

An excise tax is imposed on the sale or use by the manufacturer or importer of certain ozone-depleting chemicals (Code sec. 4681). Taxable chemicals that are recovered and recycled within the United States are exempt from tax.

House bill

No provision.

Senate amendment

The Senate amendment extends the exemption from tax for domestically recovered and recycled ozone-depleting chemicals to imported recycled halons. The exemption for imported recycled halons applies only to such chemicals imported from countries that are signatories to the Montreal Protocol.

Effective date.—Date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

15. ALLOW CERTAIN PERSONS TO ELECT NOT TO BE ELIGIBLE FOR FUTURE TAX-EXEMPT BOND FINANCING (SEC. 12834 OF THE SENATE AMENDMENT)

Present law

Tax-exempt bonds may be issued to benefit private businesses engaged in the furnishing of electric energy or gas if the business' service area does not exceed (1) two contiguous counties or (2) a city and one contiguous county. These businesses are described as engaged in the local furnishing of electricity or gas.

If certain disqualifying events occur after these and other private activity tax- exempt bonds are issued, (1) interest on the bonds may become taxable, and (2) interest paid by the private parties on bond-financed loans becomes nondeductible. Expansion of the service area of a person engaged in these local furnishing activities beyond the permitted geographic areas, described above, is a disqualifying event.

House bill

No provision.

Senate amendment

The Senate amendment allows private businesses engaged in the local furnishing of electricity or gas to expand their service areas beyond the geographic bounds allowed under present law without penalty if:

(1) No additional tax-exempt bonds are issued after the date of the amendment's enactment for any facilities to be used by them;

(2) Outstanding tax-exempt bonds benefiting the electing persons are redeemed on the earliest date allowed under the bond documents; and

(3) No tax-exempt bonds are used to finance the service area expansion.

In addition, availability of tax-exempt private activity bond financing under the exception for facilities of private persons engaged in the local furnishing of electricity or gas is limited to financing for facilities used in qualified businesses being conducted by such persons on the date of the amendment's enactment.

Effective date.—Date of enactment.

Conference agreement

The conference agreement follows the Senate amendment. The conferees wish to clarify two points regarding this provision. First, an election to terminate a person's status as engaged in the local furnishing of electricity or gas is independent of, and has no relation to, the determination of whether transmission of electricity pursuant to certain Federal Energy Regulatory Commission orders (sec. 142(f)(2)) violates the local furnishing exception. Second, the provision precluding new entities from qualifying as engaged in the local furnishing of electricity or gas is not intended to preclude qualification of successor entities resulting from corporate reorganizations where the area served remains unchanged and there is common ownership of both the predecessor and successor entities.

16. TAX-EXEMPT BONDS FOR THE SALE OF ALASKA POWER ADMINISTRATION FACILITY (SEC. 12835 OF THE SENATE AMENDMENT)

Present law

Tax-exempt bonds may be issued for the benefit of certain private electric utilities. If the bonds are used to finance acquisition of existing property by these utilities, a minimum amount of rehabilitation must be performed on the property as a condition of receiving the tax-exempt bond financing.

House bill

No provision.

Senate amendment

The Senate amendment waives the rehabilitation requirement in the case of bonds to be issued as part of sale of the Snettisham facility by the Alaska Power Administration.

Effective date.—Bonds issued after date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

17. MODIFY TREATMENT OF FOREIGN TRUSTS (SECS. 12841–12846 OF THE SENATE AMENDMENT)

Present law

Inbound foreign grantor trust rules

Under the grantor trust rules (secs. 671-679), a grantor that retains certain rights or powers generally is treated as the owner of the trust's assets without regard to whether the grantor is a domestic or foreign person. Under these rules, U.S. trust beneficiaries can avoid U.S. tax on distributions from a trust where a foreign grantor is treated as owner of the trust, even though no tax may be imposed on the trust income by any jurisdiction. In addition, a special rule treats a U.S. beneficiary of an inbound grantor trust who transferred property to the foreign grantor by gift of a portion of the trust as a grantor of the trust to the extent of the transfer.

Foreign nongrantor trust rules

Under the accumulation distribution rules (which generally apply to distributions from a trust in excess of the trust's distributable net income for the taxable year), a distribution by a foreign nongrantor trust of previously accumulated income generally is taxed at the U.S. beneficiary's average marginal rate for the prior 5 years, plus interest (secs. 666, 667). Interest is computed at a fixed annual rate of 6 percent, with no compounding (sec. 668). If adequate records of the trust are not available to determine the proper application of the rules relating to accumulation distributions to any distribution from a trust, the distribution is treated as an accumulation distribution out of income earned during the first year of the trust (sec. 666(d)).

If a foreign nongrantor trust makes a loan to one of its beneficiaries, the principal of such a loan generally is not taxable as income to the beneficiary.

Outbound foreign grantor trust rules

Under the grantor trust rules, a U.S. person who transfers property to a foreign trust generally is treated as the owner of the portion of the trust comprising that property for any taxable year in which there is a U.S. beneficiary of any portion of the trust (sec. 679(a)). This treatment generally does not apply, however, to transfers by reason of death, to transfers made before the transferor became a U.S. person, or to sales or exchanges of property at fair market value where gain is recognized to the transferor.

Residence of estates and trusts

An estate or trust is treated as foreign if it is not subject to U.S. income taxation on its income that is neither derived from U.S. sources nor effectively connected with the conduct of a U.S. trade or business. Thus, if a trust is taxed in a manner similar to a nonresident alien individual, it is considered to be a foreign trust. Any other estate or trust is treated as domestic.

Section 1491 generally imposes a 35-percent excise tax on a U.S. person that transfers appreciated property to certain foreign entities, including a foreign trust. In the case of a domestic trust that changes its situs and becomes a foreign trust, it is unclear whether property has been transferred from a U.S. person to a foreign entity, and, thus, whether the transfer is subject to the excise tax.

Information reporting requirements and associated penalties

Any U.S. person who creates a foreign trust or transfers money or property to a foreign trust is required to report that event to the IRS without regard to whether the trust is a grantor or a nongrantor trust. Similarly, any U.S. person who transfers property to a foreign trust that has one or more U.S. beneficiaries is required to report annually to the IRS. In addition, if the transfer of any appreciated property by a U.S. person is subject to section 1491, the transferor is required to report the transfer to the IRS.

Any person who fails to file a required report with respect to the creation of, or a transfer to, a foreign trust may be subjected to a penalty of 5 percent of the amount transferred to the foreign trust. Similarly, any person who fails to file a required annual report with respect to a foreign trust with U.S. beneficiaries may be subjected to a penalty of 5 percent of the value of the corpus of the trust at the close of the taxable year. The maximum amount of the penalty imposed under either case may not exceed $1,000. A reasonable cause exception is available.

Reporting of certain foreign gifts

There is no requirement to report gifts or bequests from foreign sources.

House bill

No provision.

Senate amendment

Inbound foreign grantor trust rules

The Senate amendment generally applies the grantor trust rules only to the extent that they result, directly or indirectly, in amounts being currently taken into account in computing the income of a U.S. citizen or resident or a domestic corporation. Certain exceptions apply to this general rule. Under the exceptions, the general rule does not apply in the case of revocable trusts and trusts where the only amounts distributable during the lifetime of the grantor are to the grantor or the grantor's spouse. These exceptions do not apply to the extent of gifts made by a U.S. beneficiary of the trust to the foreign grantor. The provision also does not apply to trusts established to pay compensation, and certain trusts in existence as of September 19, 1995 provided such trust is treated as owned by the grantor or another person under section 676 or 677 (other than sec. 677(a)(3)). The exception does not apply to the portion of any such trust attributable to any transfers made after September 19, 1995.

Effective date.—The provision is effective on the date of enactment.

Foreign nongrantor trust rules

Under the Senate amendment, the interest rate applicable to accumulation distributions from foreign nongrantor trusts is the interest rate applicable to underpayments of tax under section 6621(a)(2), with compounding. Simple interest continues to accrue at the rate of 6 percent through 1995. Beginning on January 1, 1996, compound interest based on the underpayment rate will be imposed on tax amounts determined under the accumulation distribution rules and the total simple interest for pre-1996 periods, if any. For purposes of computing the interest charge, the accumulation distribution is allocated proportionately to prior trust years in which the trust has undistributed net income (and the beneficiary receiving the distribution was a U.S. citizen or resident), rather than to the earliest of such years.

Effective date.—The provision applies to distributions after the date of enactment.

Under the Senate amendment, the full amount of a loan of cash or marketable securities by the foreign nongrantor trust to a U.S. grantor or a U.S. beneficiary (or a U.S. person related to such a grantor or beneficiary) is treated as distributed to the grantor or beneficiary, even if the loan bears interest at an adequate rate and is subsequently repaid.

Effective date.—The provision applies to loans made after September 19, 1995.

Outbound foreign grantor trust rules

The Senate amendment treats a nonresident alien individual who transfers property to a foreign trust and then becomes a U.S. resident within 5 years after the transfer as making a transfer to the foreign trust on his residency starting date. Under the Senate amendment, in determining whether a foreign trust paid fair market value to the transferor for property transferred to the trust, obligations issued by the trust, by any grantor or beneficiary of the trust, or by any person related to any grantor or beneficiary generally are not taken into account except as provided in regulations. The Senate amendment grants broad authority to the Secretary of the Treasury to treat anyone who was a U.S. person at any time during the existence of the trust as a U.S. person in determining whether there are U.S. beneficiaries of the trust.

Effective date.—The provision applies to transfers of property after February 6, 1995.

Residence of estates and trusts

The Senate amendment establishes a two-part objective test for determining whether a trust is foreign or domestic for tax purposes. If both parts of the test are satisfied, the trust is treated as domestic. Only the first part of the test applies to estates. First, if a U.S. court exercises primary supervision over the administration of the estate or trust, the estate or trust is treated as domestic. Second, if one or more U.S. fiduciaries have the authority to control all substantial decisions of the trust, the trust is treated as domestic.

Under the Senate amendment, if a domestic trust changes its situs and becomes a foreign trust, the trust is treated as having made a transfer of its assets to the foreign trust and is subject to the 35-percent excise tax imposed by present-law section 1491 unless one of the exceptions to this excise tax is applicable.

Effective date.—The provision modifying the rules to determine the residence of a trust or estate is effective for taxable years beginning after December 31, 1996. A trustee may elect to apply the provision to taxable years ending after the date of enactment. The amendment to section 1491 is effective on the date of enactment.

Information reporting requirements and associated penalties

Under the Senate amendment, the grantor, transferor or executor (the "responsible party") is required to notify the Treasury department upon the occurrence of certain reportable events: the creation of a foreign trust by a U.S. person, the transfer of money or property to a foreign trust by a U.S. person and the death of a U.S. citizen or U.S. resident if any portion of a foreign trust was included in the gross estate of the decedent. In addition, a U.S. owner of any portion of a foreign trust is required to ensure that the trust files an annual report with the Treasury department to provide full accounting of all the trust activities for the taxable year. Finally, any U.S. person who receives any distribution from a foreign trust is required to file a notice with the Treasury department to report the aggregate amount of the distributions received during the taxable year.

The Senate amendment provides that if a U.S. owner of any portion of a foreign trust fails to appoint a limited U.S. agent to accept service of process with respect to requests and summons by the Secretary of the Treasury in connection with tax treatment of items related to the trust, the Secretary of the Treasury may determine, in its sole discretion, the amount to be taken into account by a U.S. person under the grantor trust rules. In cases where adequate records are not provided to the Treasury department to determine the proper treatment of any distributions from a foreign trust, the distribution includible in the gross income of the distributee will be treated as an accumulation distribution from a foreign trust, unless the foreign trust elects to have a U.S. agent for the limited purpose of accepting service of process (as described above).

Under the Senate amendment, a person who fails to provide the required notice in cases involving the transfer of property to any foreign trust, or a distribution by a foreign trust to a U.S. person, is subject to an initial penalty equal to 35 percent of the "gross reportable amount" (generally the value of the property involved in the transaction). A failure to provide an annual reporting of trust activities will result in an initial penalty equal to 5 percent of the gross reportable amount. An additional $10,000 penalty is imposed for continued failure for each 30-day period beginning 90 days after the Secretary of the Treasury notifies the responsible party of such failure. Such penalties are subject to a reasonable cause exception. In no event will the total amount of penalties exceed the gross reportable amount.

Effective date.—The reporting requirements and applicable penalties generally apply to reportable events occurring or distributions received after the date of enactment. The annual reporting requirement and penalties applicable to U.S. grantors apply to taxable years of such persons beginning after the date of enactment.

Reporting of certain foreign gifts

The Senate amendment generally requires any U.S. person (other than certain tax-exempt organizations) that receives purported gifts or bequests from foreign sources totaling more than $10,000 during the taxable year to report them to the Treasury department. If the U.S. person fails, without reasonable cause, to report foreign gifts as required, the U.S. person will be subject to a penalty equal to 5 percent of the amount of the gift for each month that the failure continues, with the total penalty not to exceed 25 percent of such amount. In addition, certain sanctions may apply.

Effective date.—This provision applies to amounts received after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, with modifications and clarifications.

Inbound foreign grantor trust rules

The conference agreement clarifies that a foreign corporation that is otherwise a passive foreign investment company ("PFIC") as defined in section 1296 may not avoid PFIC characterization under the grantor trust rules (e.g., by transferring its assets to a grantor trust).

The conference agreement modifies the Senate amendment by providing that the rule which treats a U.S. beneficiary of an inbound grantor trust who transferred property to the foreign grantor by gift as a grantor of the trust to the extent of the transfer applies without regard to whether the foreign grantor would otherwise be treated as the owner of any portion of such trust. This provision is designed to prevent the use of pre-immigration gifts to avoid the application of the grantor trust rules.

Foreign nongrantor trust rules

Under the Senate amendment, the full amount of a loan of cash or marketable securities by a foreign nongrantor trust to a U.S. grantor or a U.S. beneficiary (or a U.S. person related to such a grantor or beneficiary) is treated as distributed to the grantor or beneficiary, even if the loan bears interest at an adequate rate and is subsequently repaid. The conference agreement provides that the Secretary of the Treasury may prescribe regulations providing exceptions to this rule. The conferees intend that a loan that bears arm's-length terms would qualify for such an exception.

Outbound foreign grantor trust rules

Under the Senate amendment, in determining whether a foreign trust paid fair market value to the transferor for property transferred to the trust, obligations issued by the trust, by any grantor or beneficiary of the trust, or by any person related to any grantor or beneficiary generally are not taken into account except as provided in regulations. The conferees intend to clarify that an obligation that bears arm's-length terms would qualify for such an exception.

The conference agreement deletes the provision of the Senate amendment that grants broad authority to the Secretary of the Treasury to treat anyone who was a U.S. person at any time during the existence of the trust as a U.S. person in determining whether there are U.S. beneficiaries of the trust.

Information reporting requirements and associated reporting penalties

Transfers to certain nonexempt trusts

The Senate amendment requires the grantor, transferor, or executor to notify the Treasury department upon the occurrence of certain reportable events: the creation of a foreign trust by a U.S. person, the transfer of money or property to a foreign trust by a U.S. person, and the death of a U.S. citizen or U.S. resident if any portion of a foreign trust was included in the gross estate of the decedent. The conference agreement modifies the Senate amendment and excludes from the definition of reportable events any such occurrence with respect to a nonexempt employees' trust that is described in section 402(b).

Sanction for failure to appoint limited U.S. agent

The Senate amendment provides that if a U.S. owner of any portion of a foreign trust fails to appoint a limited U.S. agent to accept service of process with respect to requests and summons by the Secretary of the Treasury in connection with the tax treatment of items related to the trust, the Secretary of the Treasury may determine, in its sole discretion, the amount to be taken into account by a U.S. person under the grantor trust rules. Under the conference agreement, in cases where a U.S. grantor of a foreign trust does not appoint such a limited agent, the Secretary of the Treasury may determine the amount to be taken into account by a U.S. person under the grantor trust rules. In this regard, the conferees intend that the Treasury Secretary's exercise of its authority to make such a determination will be subject to judicial review under an arbitrary or capricious standard, which accordingly provides a high degree of deference to such determination.

Sanction for failure to maintain adequate records

The conference agreement clarifies the provision of the Senate amendment which provides that in cases where adequate records are not provided to the Treasury department to determine the proper treatment of any distributions from a foreign trust, the distribution includible in the gross income of the distributee generally will be treated as an accumulation distribution includible in the gross income of the distributee from a foreign trust. Under the conference agreement, when a U.S. distributee does not provide sufficient records, the accumulation distribution is deemed to come from the trust's average year (i.e., the number of years that the trust has been in existence divided by two) for purposes of computing the interest charge applicable to such distribution.

Reporting of certain foreign gifts

The Senate amendment generally requires any U.S. person (other than certain tax-exempt organizations) that receives purported gifts or bequests from foreign sources totaling more than $10,000 during the taxable year to report them to the Treasury department. Under the conference agreement, the threshold for this reporting requirement is indexed for inflation.

18. TREATMENT OF FINANCIAL ASSET SECURITIZATION INVESTMENT TRUSTS ("FASITS") (SEC. 12851 OF THE SENATE AMENDMENT)

Present law

An individual can own income-producing assets directly, or indirectly through an entity (i.e., a corporation, partnership, or trust). Where an individual owns assets through an entity (e.g., a corporation), the nature of the interest in the entity (e.g., stock of a corporation) is different than the nature of the assets held by the entity (e.g., assets of the corporation).

Securitization is the process of converting one type of asset into another and generally involves the use of an entity separate from the underlying assets. In the case of securitization of debt instruments, the instruments created in the securitization typically have different maturities and characteristics than the debt instruments that are securitized.

Entities used in securitization include entities that are subject to tax (e.g., a corporation), conduit entities that generally are not subject to tax (e.g., a partnership, grantor trust, or real estate mortgage investment conduit ("REMIC")), or partial-conduit entities that generally are subject to tax only to the extent income is not distributed to owners (e.g., a trust, real estate investment trust ("REIT"), or regulated investment company ("RIC")).

There is no statutory entity that facilitates the securitization of revolving, non-mortgage debt obligations.

House bill

No provision.

Senate amendment

The Senate amendment creates a new type of statutory entity called a "financial asset securitization investment trust" ("FASIT") that facilitates the securitization of debt obligations such as credit card receivables, home equity loans, and auto loans. A FASIT generally will not be taxable; the FASIT's taxable income or net loss will flow through to the owner of the FASIT.

The ownership interest of a FASIT generally will be required to be entirely held by a single domestic C corporation. In addition, a FASIT generally may hold only qualified debt obligations, and certain other specified assets, and will be subject to certain restrictions on its activities. An entity that qualifies as a FASIT can issue instruments that meet certain specified requirements and treat those instruments as debt for Federal income tax purposes. Instruments issued by a FASIT bearing yields to maturity over 5 percentage points above the yield to maturity on specified United States government obligations (i.e., "high-yield interests") may be held only by domestic C corporations that are not exempt from income tax.

Effective date.—The provisions take effect on the date of enactment.

Conference agreement

In general

The conference agreement adopts the provisions of the Senate amendment with modifications. Thus, the conference agreement creates a new type of statutory entity called a "financial asset securitization investment trust" ("FASIT") that facilitates the securitization of debt obligations such as credit card receivables, home equity loans, and auto loans. A FASIT generally will not be taxable; the FASIT's taxable income or net loss will flow through to the owner of the FASIT.

The ownership interest of a FASIT generally will be required to be entirely held by a single domestic C corporation. The conferees expect that the Treasury Department will issue guidance on how this rule would apply to cases in which the entity that owns the FASIT join in the filing of a consolidated return with other members of the group that wish to hold an ownership interest in the FASIT. In addition, a FASIT generally may hold only qualified debt obligations, and certain other specified assets, and will be subject to certain restrictions on its activities. An entity that qualifies as a FASIT can issue instruments that meet certain specified requirements and treat those instruments as debt for Federal income tax purposes. Instruments issued by a FASIT bearing yields to maturity over 5 percentage points above the yield to maturity on specified United States government obligations (i.e., "high-yield interests") may be held only by domestic C corporations that are not exempt from income tax.

Qualification as a FASIT

In general

To qualify as a FASIT an entity must: (1) make an election to be treated as a FASIT for the year of the election and all subsequent years; (2) have assets substantially all of which (including assets that the FASIT is treated as owning because they support regular interests) are specified types called "permitted assets;" (3) have non-ownership interests be certain specified types of debt instruments called "regular interests"; (4) have a single ownership interest which is held by an "eligible holder"; and (5) not qualify as a RIC.[69]

Election to be a FASIT

Once an election to be a FASIT is made, the election applies for that year and all subsequent years until the entity ceases to be

[69] The Senate amendment also required that an entity cannot be a FASIT if any person other than the FASIT's owner holds the right to receive excess servicing fees with respect to permitted debt instruments. The conference agreement deleted this requirement in favor of a requirement that gain on retained servicing fees and other stripped interests be recognized.

a FASIT.[70] Once an entity ceases to be a FASIT, it is not a FASIT for that year or any subsequent year. Nonetheless, an entity can continue to be a FASIT where the Treasury Department determines that the entity inadvertently ceases to be a FASIT, steps are taken reasonably soon after it is discovered that the entity ceased being a FASIT so that it again qualifies as a FASIT, and the FASIT and its owner take those steps that the Treasury Department deems necessary. If an election to be a FASIT is made after the initial year of an entity, all of the assets in the entity at the time of the FASIT election are deemed contributed to the FASIT at that time and, accordingly, any gain (but not loss) on such assets will be recognized at that time.

Permitted assets

In general.—For an entity or arrangement to qualify as a FASIT, substantially all of its assets must consist of the following "permitted assets": [71] (1) cash and cash equivalents; [72] (2) certain permitted debt instruments; (3) certain foreclosure property; (4) certain instruments or contracts that represent a hedge or guarantee of debt held or issued by the FASIT; and (5) contract rights to acquire permitted debt instruments or hedges. A FASIT must meet the asset test at the 90th day after its formation and at all times thereafter. Permitted assets may be acquired at any time by a FASIT, including any time after its formation.

Permitted debt instruments.—A debt instrument will be a permitted asset only if the instrument is indebtedness for Federal income tax purposes and it bears (1) fixed interest or (2) variable interest of a type that relates to qualified variable rate debt (as defined in Treasury regulations prescribed under sec. 860G(a)(1)(B)). Except for cash equivalents, permitted debt obligations cannot be obligations issued, directly or indirectly, by the owner of the FASIT or a related person.

Foreclosure property.—Permitted assets include property acquired on default (or imminent default) of debt instruments held by the FASIT that would be foreclosure property to a REIT (under sec. 856(e)) or would be foreclosure property to a REIT but for certain leases entered into or construction performed (as described in sec. 856(e)(4)) while held by the FASIT.

Hedges.—Permitted assets include interest rate or foreign currency notional principal contracts, letters of credit, insurance, guarantees against payment defaults, or other similar instruments as permitted under Treasury regulations, which are reasonably required to guarantee or hedge against the FASIT's risks associated with being the obligor of regular interests.

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[70] The Senate amendment required that the election to be a FASIT must be made on its return for its first year. The conference agreement deleted this rule.

[71] The conference agreement deleted the provision in the Senate amendment that included a partnership interest as a permitted asset if all of the assets of the partnership are permitted debt instruments and the partnership interest provides the partner with an undivided interest in those permitted debt instruments.

[72] The Senate amendment provided that permitted assets included investments of amounts received from permitted debt obligations for a temporary period before distributions to regular and ownership interests in the FASIT. The conference agreement expanded the definition of permitted assets to include cash and cash equivalents and deleted the category for temporary period investments.

"Regular interests" of a FASIT

Under the conference agreement, "regular interests," including "high-yield interests," of a FASIT are treated as debt for Federal income tax purposes regardless of whether instruments with similar terms issued by non-FASITs might be characterized as equity under general tax principles. To be treated as a "regular interest," an instrument must have fixed terms and must: (1) unconditionally entitle the holder to receive a specified principal amount; (2) pay interest that is based on (a) one or more rates that are fixed, (b) rates that measure contemporaneous variations in the cost of newly borrowed funds, or (c) to the extent permitted by Treasury regulations, variable rates allowed to regular interests of a REMIC if the FASIT would otherwise qualify as a REMIC; (3) have a term to maturity of no more than 30 years, except as permitted by Treasury regulations; (4) be issued to the public with a premium of not more than 25 percent of its stated principal amount; and (5) have a yield to maturity at issue of no more than 5 percentage points above the applicable Federal rate (AFR) for the calendar month in which the instrument is issued.

A FASIT also may issue high-yield debt instruments, which includes any debt instrument issued by a FASIT that meets the second and third conditions described above, so long as such interests are not held by a disqualified holder. A "disqualified holder" generally is any holder other than (1) a domestic C corporation that does not qualify as a RIC, REIT, REMIC, or cooperative [73] or (2) a dealer who acquires FASIT debt for resale to customers in the ordinary course of business.[74] An excise tax is imposed at the highest corporate rate on a dealer if there is a change in dealer status or if the holding of the instrument is for investment purposes. A 31-day grace period is granted before ownership of an interest held by a dealer generally could be treated as held by the FASIT owner for investment purposes.

Permitted ownership holder

A permitted holder of the ownership interest in a FASIT generally is a non-exempt domestic C corporation, other than a corporation that qualifies as a RIC, REIT, REMIC, or cooperative.

Transfers to non-permitted holders of high-yield interest

A transfer of a high-yield interest to a disqualified holder is to be ignored for Federal income tax purposes. Thus, such a transferor will continue to be liable for any taxes due with respect to the transferred interest.

[73] The Senate amendment did not include cooperatives as a disqualified holder. The conferees believe that cooperatives also should be treated as disqualified holders since cooperatives, like RICs and REITs, are treated as pass-through entities and, also like the owners of RIC's and REITs, the cooperative's members and patrons need not be C corporations.

[74] The Senate amendment also excluded from a disqualified holder a dealer in goods and services provided that the permitted debt instruments in the FASIT exclusively were loans made by a dealer in the ordinary course of his business to finance the dealer's goods or services. The conference agreement deleted this rule. In addition, in the case of a securities dealer which may be an eligible holder, the conferees understand that the mark-to-market rule of section 475 will not apply to an ownership interest in a FASIT or assets held in the FASIT.

Taxation of a FASIT

In general

A FASIT generally is not subject to tax. Instead, all of the FASIT's assets and liabilities are treated as assets and liabilities of the FASIT's owner and any income, gain, deduction or loss of the FASIT is allocable directly to its owner.[75] Any securities held by the FASIT that are treated as held its owner are treated as held for investment. The taxable income of a FASIT is calculated using an accrual method of accounting. The constant yield method and principles that apply for purposes of determining OID accrual on debt obligations whose principal is subject to acceleration apply to all debt obligations held by a FASIT to calculate the FASIT's interest and discount income and premium deductions or adjustments. For this purpose, a FASIT's income does not include any income subject to the 100-percent penalty excise tax on prohibited transactions and a deduction is allowed for the corporate tax paid on income from foreclosure property.

Income from foreclosure property

A FASIT is subject to tax at the highest corporate rate on net income from any foreclosure property that was acquired in connection with the default or imminent default of a permitted debt obligation. For this purpose, property is foreclosure property if it would be foreclosure property to a REIT, determined without the special rules for leased property or property under construction (sec. 856(e)(4)). Foreclosure property does not include property acquired pursuant to a security interest that was created for the principal purpose of having the FASIT acquire such property.

Income from prohibited transactions

In addition to any tax on foreclosure property, a FASIT is required to pay a penalty excise tax equal to 100 percent of net income derived from (1) an asset that is not a permitted asset, (2) any disposition of an asset other than a permitted disposition, (3) any income attributable to loans originated by the FASIT,[76] and (4) compensation for services (other than fees for a waiver, amendment, or consent under permitted assets not acquired through foreclosure). A permitted disposition is any disposition (1) arising from complete liquidation of a class of regular interests (i.e., a qualified liquidation), (2) incident to the foreclosure, default, or imminent default of the asset, (3) incident to the bankruptcy or insolvency of the FASIT, (4) necessary to avoid a default on any indebtedness of the FASIT attributable to a default (or imminent default) on an asset of the FASIT, (4) to facilitate a clean-up call, or (5) to sub-

[75] The Senate amendment required that the taxable income of a FASIT generally is calculated as if it were a partnership. The conference agreement deleted this rule in favor of a rule stating that the FASIT's owner include all of the FASIT's assets, liabilities, income, gain, deductions, losses and credits in computing its Federal income tax since the Senate amendment's partnership rule might result in unexpected erroneous consequences where the FASIT can have only one owner. The conference agreement retained the rule of the Senate amendment that treats tax-exempt interest to the FASIT as taxable ordinary income to the FASIT owner. The Senate amendment required that the FASIT have the same taxable year as its owner. The conference agreement deleted this requirement as unnecessary in light of the conference agreement's adoption of a flow-through rule in lieu of the partnership rule.

[76] The conference agreement added this rule.

stitute a permitted debt instrument for another such instrument in order to reduce over-collateralization where a principal purpose of the disposition was not to avoid recognition of gain arising from an increase in its market value after its acquisition by the FASIT.

Taxation of interests in the FASIT

Taxation of holders of regular interests

In general.—A holder of a regular interest, including a high-yield interest, is taxed in the same manner as a holder of any other debt instrument, except that the regular interest holder is required to account for income relating to the interest on an accrual method of accounting, regardless of the method of accounting otherwise used by the holder.

High-yield interests.—Holders of high-yield interests are not allowed to use net operating losses to offset any income derived from the high-yield debt. Any net operating loss carryover shall be computed by disregarding any income arising by reason of the disallowed loss.

In addition, a transfer of a high-yield interest to a disqualified holder is not recognized for Federal income tax purposes such that the transferor will continue to be taxed on the income from the high-yield interest unless the transferee provides the transferor with an affidavit that the transferee is not a disqualified person or the Treasury Secretary determines that the high-yield interest is no longer held by a disqualified person and a corporate tax has been paid on the income from the high-yield interest while it was held by a disqualified person. High-yield interests may be held without a corporate tax being imposed on the income from the high-yield interest where the interest is held by a dealer in securities who acquired such high-yield interest for sale in the ordinary course of his business as a securities dealer. In such a case, a corporate tax is imposed on such a dealer if his reason for holding the high-yield interest changes to investment. There is a presumption that the dealer has not changed his intent for holding high-yield instruments to investment for the first 31 days he holds such interests unless such holding is part of a plan to avoid the restriction on holding of high-yield interests by disqualified persons.

Where a pass-through entity (other than a FASIT) issues either debt or equity instruments that are supported by regular interests in a FASIT and such instruments bear a yield to maturity greater than the yield on the regular interests or the applicable Federal rate plus 5 percentage points, then an excise tax is imposed on the pass-through entity at a rate equal to the highest corporate rate on the income of any holder of such instrument attributable to the regular interests.[77]

Taxation of holder of ownership interest

All of the FASIT's assets and liabilities are treated as assets and liabilities of the holder of a FASIT ownership interest and that owner takes into account all of the FASIT's income, gain, deduction, or loss in computing its taxable income or net loss for the taxable year. The character of the income to the holder of an owner-

[77] The conference agreement added this provision.

ship interest is the same as its character to the FASIT, except tax-exempt interest is taken into income of the holder as ordinary income.

Losses on assets contributed to the FASIT are not allowed upon their contribution, but may be allowed to the FASIT owner upon their disposition by the FASIT. A special rule provides that the holder of a FASIT ownership interest cannot offset income from the FASIT ownership interest with any other losses. Any net operating loss carryover of the FASIT owner shall be computed by disregarding any income arising by reason of a disallowed loss.

For purposes of the alternative minimum tax, the owner's taxable income is determined without regard to the minimum FASIT income. The alternative minimum taxable income of the FASIT owner cannot be less than the FASIT income for that year, and the alternative minimum tax net operating loss deduction is computed without regard to the minimum FASIT income.

Transfers to and distributions from FASITs

Gain generally is recognized immediately by the owner of the FASIT upon the transfer of assets to a FASIT. Assets that are acquired by the FASIT from someone other than its owner are treated as if they were acquired by the owner and then contributed to the FASIT. In addition, any assets of the FASIT owner or a related person that are used to support FASIT regular interests are treated as contributed to the FASIT and thus also are treated as sold at the earliest date that such assets support any FASIT's regular interests.[78] To the extent provided by Treasury regulations, gain recognition on the contributed assets may be deferred until such assets support regular interests issued by the FASIT or any indebtedness of the owner or related person. These regulations may adjust other statutory FASIT provisions to the extent such provisions are inconsistent with such regulations. For example, such regulations may disqualify certain assets as permitted assets.

A distribution of assets by a FASIT with respect to a regular or ownership interest generally is treated as a sale of the assets and distribution of the sale proceeds. The conferees understand that gain may be recognized if the FASIT distributes assets to retire a regular interest because such a transaction is treated as a sale or exchange.

The basis of any FASIT asset is increased by the amount of the taxable gain recognized on the contribution of the assets to, or distribution of the assets from, the FASIT.

Valuation rules

In general, except in the case of debt instruments, the value of FASIT assets is their fair market value. The conference agreement contains special rules for valuing debt instruments for purposes of computing gain on the transfer to or from a FASIT.[79] Under these rules, the value of debt instruments generally is the

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[78] The Senate amendment directly reached that result since it provided that any assets of the FASIT's owner or its related person are treated as sold at the earliest date that such assets support of the FASIT's regular interests.

[79] The Senate amendment provided that the valuation rules only applied in determining the value of assets contributed to the FASIT. The conference agreement extended the valuation rules to distributions from a FASIT.

sum of the present values of the reasonably expected cash flows from such obligations discounted over the weighted average life of such assets. The discount rate is 120 percent of the applicable Federal rate, compounded semiannually, or such other rate that the Treasury Secretary shall prescribe by regulations.[80] For purposes of determining the value of a pool of revolving loan accounts having substantially the same terms, each extension of credit (other than the accrual of interest) is treated as a separate debt instrument and the maturity of the instruments is determined using the reasonably anticipated periodic payment rate at which principal payments will be made as a proportion of their aggregate outstanding principal balances assuming that payments are applied to the earliest credit extensions. The conferees understand that reasonably expected cash flows from loans will reflect nonpayments (i.e., losses) and early payments (i.e., prepayments), but not costs of servicing the loans.

Related person

For purposes of the FASIT rules, a person is related to another person if that person bears a relationship to the other person specified in sections 267(b) or 707(b)(1), using a 20-percent ownership test instead of the 50-percent test, or such persons are engaged in trades or businesses under common control as determined under sections 52(a) or (b).

Effective date

The provisions of the conference agreement take effect on the date of enactment.

19. TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION FOR WATER UTILITIES (SEC. 12861(A) OF THE SENATE AMENDMENT)

Present and prior law

The gross income of a corporation does not include contributions to its capital. A contribution to the capital of a corporation does not include any contribution in aid of construction or any other contribution as a customer or potential customer.

Prior to the enactment of the Tax Reform Act of 1986 (''1986 Act''), a regulated public utility that provided electric energy, gas, water, or sewage disposal services was allowed to treat any amount of money or property received from any person as a tax-free contribution to its capital so long as such amount: (1) was a contribution in aid of construction; and (2) was not included in the taxpayer's rate base for rate-making purposes. A contribution in aid of construction did not include a connection fee. The basis of any property acquired with a contribution in aid of construction was zero.

If the contribution was in property other than electric energy, gas, steam, water, or sewerage disposal facilities, such contribution was not includible in the utility's gross income so long as: (1) an

[80] The Senate amendment provided that the discount rate be 130 percent of the applicable Federal rate (AFR). Since the conference agreement allows the reasonably expected cash flows to reflect losses, the conferees believe that the proper rate to discount those net cash flows should be 120 percent of the AFR.

amount at least equal to the amount of the contribution was expended for the acquisition or construction of tangible property that was used predominantly in the trade or business of furnishing utility services; (2) the expenditure occurred before the end of the second taxable year after the year that the contribution was received; and (3) certain records were kept with respect to the contribution and the expenditure. In addition, the statute of limitations for the assessment of deficiencies was extended in the case of these contributions.

These rules were repealed by the 1986 Act. Thus, after the 1986 Act, the receipt by a utility of a contribution in aid of construction is includible in the gross income of the utility, and the basis of property received or constructed pursuant to the contribution is not reduced.

House bill

No provision.

Senate amendment

The Senate amendment restores the contributions in aid of construction provisions that were repealed by the 1986 Act for regulated public utilities that provide water or sewerage disposal services.

Effective date.—The provision is effective for amounts received after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

20. REQUIRE WATER UTILITY PROPERTY TO BE DEPRECIATED OVER 25 YEARS (SEC. 12861(B) OF THE SENATE AMENDMENT)

Present law

Property used by a water utility in the gathering, treatment, and commercial distribution of water and municipal sewers are depreciated over a 20-year period for regular tax purposes. The depreciation method generally applicable to property with a recovery period of 20 years is the 150-percent declining balance method (switching to the straight-line method in the year that maximizes the depreciation deduction). The straight-line method applies to property with a recovery period over 20 years.

House bill

No provision.

Senate amendment

The Senate amendment provides that water utility property will be depreciated using a 25-year recovery period and the straight-line method for regular tax purposes. For this purpose, "water utility property" means (1) property that is an integral part of the gathering, treatment, or commercial distribution of water, and that, without regard to the proposal, would have had a recovery period of 20 years and (2) any municipal sewer. Such property generally is described in Asset Classes 49.3 and 51 of Revenue Procedure 87–56, 1987–2 C.B. 674. The Senate amendment does not change the class lives of water utility property for purposes of the alternative depreciation system of section 168(g).

Effective date.—The provision is effective for property placed in service after the date of enactment, other than property placed in service pursuant to a binding contract in effect on such date and at all times thereafter before the property is placed in service.

Conference agreement

The conference agreement follows the Senate amendment.

21. ALLOW AMORTIZATION FOR INTRASTATE OPERATING RIGHTS OF MOTOR CARRIERS (SEC. 12862 OF THE SENATE AMENDMENT)

Present law and background

A taxpayer is allowed to write-off and deduct the adjusted basis of property used in trade or business when such property becomes worthless (sec. 165). A deduction is not allowed if the property merely loses value but does not become worthless. For example, in *CRST, Inc.*, 909 F2d. 1146 (8th Cir. 1990), a motor carrier was denied a worthlessness deduction for the basis of operating authorities that had become less valuable, but not worthless, due to deregulation.

Effective January 1, 1995, section 601 of the Federal Aviation Administration Authorization Act of 1994 preempts and prohibits State regulation of the price, route, or service of intrastate operations of motor carriers. In 1980, Congress similarly deregulated the operation of interstate motor carriers. Pursuant to section 266 of the Economic Recovery Tax Act of 1981, Congress allowed taxpayers who held operating authorities as of the effective date of such deregulation to amortize the adjusted basis of the authorities over a 60-month period.

House bill

No provision.

Senate amendment

The Senate amendment allows a taxpayer who held, on January 1, 1995, one or more operating authorities that were preempted by section 601 of the Federal Aviation Administration Authorization Act of 1994, to amortize the aggregate adjusted bases of such authorities ratably (i.e., on straight-line basis) over the 36-month period beginning January 1, 1995. The amortization deductions provided under the amendment are treated as depreciation deductions for purposes of the Internal Revenue Code.

Effective date.—The provision is effective for taxable years ending on or after January 1, 1995.

Conference agreement

The conference agreement follows the Senate amendment.

22. ESTABLISH 15-YEAR RECOVERY PERIOD FOR RETAIL MOTOR FUELS OUTLET STORES (SEC. 12863 OF THE SENATE AMENDMENT)

Present law

Under present law, property used in the retail gasoline trade is depreciated under section 168 using a 15-year recovery period and the 150-percent declining balance method. Nonresidential real property (such as a convenience store) is depreciated using a 39-year recovery period and the straight-line method. It is understood that taxpayers generally have taken the position that convenience stores and other buildings installed at retail motor fuels outlets have a 15-year recovery period. The IRS, in a position described in a recent Coordinated Issues Paper, generally limits the application of the 15-year recovery period to instances where the structure: (1) is 1,400 square feet or less or (2) meets a 50-percent test. The 50-percent test is met if: (1) 50 percent or more of the gross revenues that are generated from the building are derived from petroleum sales *and* (2) 50 percent or more of the floor space in the building is devoted to petroleum marketing sales.

House bill

No provision.

Senate amendment

The Senate amendment provides that 15-year property includes any section 1250 property (generally, depreciable real property) that is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet). A retail motor fuels outlet does not include any facility related to petroleum or natural gas trunk pipelines or to any section 1250 property used only to an insubstantial extent in the retail marketing of petroleum or petroleum products.

Effective date.—The provision is effective for property placed in service before, on, or after the date of enactment and to which the amendments made by section 201 of the Tax Reform Act of 1986 apply (i.e., property subject to the modified Accelerated Cost Recovery System of sec. 168). The taxpayer may elect to forego the application of the provision for any property placed in service prior to the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, with modifications.

The conference agreement provides a 20-year class life for retail motor fuels outlets for purposes of the alternative depreciation system of section 168(g).

In addition, the conferees wish to clarify what types of property qualify as a retail motor fuels outlet. Section 1250 property will so qualify if it meets a 50-percent test. The 50-percent test is met if : (1) 50 percent or more of the gross revenues that are generated from the property are derived from petroleum sales or (2) 50 percent or more of the floor space in the property is devoted to petroleum marketing sales. The conferees intend that the determination of whether either prong of this test is met will be made pursuant to the recent Coordinated Issue Paper. Property not meeting the test will not qualify as a retail motor fuels outlet. For property placed in service in taxable years that end after the date of enactment, the determination of whether the property meets the 50-percent test generally will be made in the year the property is placed in service. However, the test may be applied in the subsequent taxable year if the property is placed in service near the end of the taxable year and the use of the property during such short period is not representative of the subsequent use of the property. The conferees intend that with respect to property placed in service in taxable years that ended before the date of enactment of the provision, the determination of whether the property meets the 50-percent test generally will be made in a manner consistent with the manner in which the 50-percent test of the current Coordinated Issues Paper is applied (but by substituting the disjunctive test of the conference agreement for the present conjunctive test of the Paper). The conferees also intend that if property meets (or fails to meet) the 50-percent test but subsequently fails to meet (or meets) such test for more than a temporary period, such failure (or qualification) may be treated as a change in the use of property to which section 168(I)(5) applies.

In addition, property the size of which is 1,400 square feet or less also will qualify if such property would have qualified under the current Coordinated Issues Paper.

23. APPLICATION OF FAILURE-TO-PAY PENALTY TO SUBSTITUTE RETURNS (SEC. 13639 OF THE HOUSE BILL AND SEC. 12871 OF THE SENATE AMENDMENT)

Present law

Section 6651(a)(2) provides that the IRS may assess a penalty for failure to pay tax from the due date of the return until the tax is paid. If no return is filed by the taxpayer and the IRS files a substitute return under section 6020, the tax on which the penalty is measured is considered a deficiency assessable under section 6212 or 6213, and the failure to pay penalty begins to accumulate 10 days after the IRS sends the taxpayer a notice and demand for payment of the tax.

House bill

The House bill applies the failure to file penalty to substitute returns in the same manner as the penalty applies to delinquent filers.

Effective date.—The provision applies in the case of any return the due date for which (determined without regard to extensions) is after the date of enactment.

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.

24. REPEAL EXEMPTION FOR WITHHOLDING ON GAMBLING WINNINGS FROM BINGO AND KENO WHERE PROCEEDS EXCEED $5,000 (SEC. 13633 OF THE HOUSE BILL AND SEC. 12872 OF THE SENATE AMENDMENT)

Present law

In general, proceeds from a wagering transaction are subject to withholding at a rate of 28 percent if the proceeds exceed $5,000 and are at least 300 times as large as the amount wagered. No withholding tax is imposed on winnings from bingo or keno.

House bill

The House bill imposes withholding on proceeds from bingo or keno wagering transactions at a rate of 28 percent if such proceeds exceed $5,000, regardless of the odds of the wager.

Effective date.—The provision is effective on January 1, 1996.

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.

25. TREATMENT OF CERTAIN GAINS AND LOSSES OF LIFE INSURANCE COMPANIES UNDER SECTION 818(B) (SEC. 12873 OF THE SENATE AMENDMENT)

Present law

In the case of a taxpayer that is a corporation, losses from the sale or exchange of a capital asset generally are allowed only to the extent of gains from such sales or exchanges (sec. 1211(a)). A loss on the sale or exchange of property used in the trade or business of the taxpayer, however, is treated as an ordinary loss, rather than as a loss from the sale or exchange of a capital asset (secs. 1221(2)). In addition, if losses from property used in the trade or business equal or exceed a taxpayer's gains from such property, then the gains and losses are treated as ordinary (sec. 1231).

A special limitation on ordinary loss treatment applies in the case of a life insurance company, under section 818(b). Section 818(b) provides that property used in the trade or business includes only property used in carrying on an insurance business. Thus, for example, a loss on the sale or exchange of real estate that is held by a life insurance company and that is not used in the insurance business is treated as a capital loss, and is allowed only to the extent of the taxpayer's capital gain.

Capital losses of a corporation generally may be carried back to each of the three taxable years preceding the loss year, and forward to each of the five taxable years succeeding the loss year (sec. 1212).

House bill

No provision.

Senate amendment

Under the Senate amendment, capital loss treatment under present-law section 818(b) does not apply to 85 percent of a life insurance company's losses from the sale or exchange of foreclosed real estate. Losses from such property are treated as ordinary losses allowable in equal amounts over each of the first 10 taxable years following the year of disposition. Present-law capital loss treatment under section 818(b) is retained for the remaining 15 percent of such losses. Foreclosure property means real property used in the trade or business that is acquired by a life insurance company as the result of (1) such company having bid on such property at foreclosure, or (2) such company having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default (or default was imminent) on indebtedness which such property secured.

Effective date.—The provision is effective for taxable years beginning after December 31, 1994.

Conference agreement

The conference agreement follows the Senate amendment, with modifications.

Under the conference agreement, a life insurance company may elect ordinary loss treatment for up to 20 percent of the losses for a taxable year from the sale or exchange of foreclosure property. The amount of the loss from foreclosure property for which the taxpayer elects ordinary loss treatment is amortized and recognized ratably over the 10-taxable-year period beginning with the taxable year following the taxable year in which the sale or exchange of the foreclosure property occurred.

Two further elections are provided under the conference agreement, in addition to the first election under the provision described in the previous paragraph. Under the second election, the taxpayer may elect for any of the taxable years in a "change period" to change the percentage of the loss from sale or exchange of foreclosure property that was treated as ordinary loss and amortized over a 10-taxable-year period. In no event may the percentage exceed 20 percent of the loss from sale or exchange of foreclosure property for the taxable year of such sale or exchange. If the taxpayer elects to change the percentage, the changed percentage is treated as if it were the percentage the taxpayer elected in the year of the sale or exchange of the foreclosure property. Proper adjustments must be made for all taxable years to reflect the change. The "change period" is the 3-taxable-year period following the taxable year in which the sale or exchange of the foreclosure property occurred.

For purposes of the statute of limitations only, any such change in the percentage made during the "change period" is treated as a capital loss carryback from the year of the change.

The conference agreement provides a third election. The taxpayer may elect to treat as a capital loss arising in the taxable year of this third election any unused amount of an ordinary loss from sale or exchange of foreclosure property that was amortized over a 10-taxable-year period under the provision. The unused amount of such a loss is the amount of the amortizable portion of the loss that has not been recognized as of the close of the preceding taxable year. This third election may be made only for any taxable year in the 5-taxable-year period following the taxable year in which the sale or exchange of the foreclosure property occurred.[81]

An ordering rule is provided under the third election. The unused amount of the loss is treated as coming first from the last taxable year in the 10-taxable year period of amortization, and then from each preceding taxable year in reverse chronological order.

Any of the elections under the provision must be made on or before the due date (including extensions) for the tax return of the taxable year of the election.

The definition of foreclosure property and the effective date are the same as provided in the Senate amendment.

26. CLARIFY TREATMENT OF NEWSPAPER DISTRIBUTORS AND CARRIERS AS DIRECT SELLERS (SEC. 12874 OF THE SENATE AMENDMENT)

Present law

For Federal tax purposes, there are two classifications of workers: a worker is either an employee of the service recipient or an independent contractor. Significant tax consequences result from the classification of a worker as an employee or independent contractor. These differences relate to withholding and employment tax requirements, as well as the ability to exclude certain types of compensation from income or take tax deductions for certain expenses. Some of these consequences favor employee status, while others favor independent contractor status. For example, an employee may exclude from gross income employer-provided benefits such as pension, health, and group-term life insurance benefits. On the other hand, an independent contractor can establish his or her own pension plan and deduct contributions to the plan. An independent contractor also has greater ability to deduct work-related expenses.

Under present law, the determination of whether a worker is an employee or an independent contractor is generally made under a 20-factor common-law facts and circumstances test that seeks to determine whether the service provider is subject to the control of the service recipient, not only as to the nature of the work performed, but the circumstances under which it is performed. Under a special safe harbor rule (sec. 530 of the Revenue Act of 1978), a service recipient may treat a worker as an independent contractor for employment tax purposes even though the worker is an employee under the common-law test if the service recipient has a reasonable basis for treating the worker as an independent contractor and certain other requirements are met.

In addition to the 20-factor common-law test, there are also some persons who are treated by statute as either employees or independent contractors. For example, "direct sellers" are deemed to be independent contractors. A direct seller is a person engaged in the trade or business of selling consumer products in the home or otherwise than in a permanent retail establishment, if substantially all the remuneration for the performance of the services is di-

[81] This period parallels the 5-year period during which the taxpayer could have carried forward the loss, had it been a capital loss.

rectly related to sales or other output rather than to the number of hours worked, and the services performed by the person are performed pursuant to a written contract between such person and the service recipient and such contract provides that the person will not be treated as an employee for Federal tax purposes.

The newspaper industry has generally taken the position that newspaper distributors and carriers should be treated as direct sellers for income and employment tax purposes. The Internal Revenue Service has generally taken the position that the direct seller rules do not apply to newspaper distributors and carriers operating under an agency distribution system (i.e., where the publisher retains title to the newspapers).

House bill

No provision.

Senate amendment

The Senate amendment clarifies the treatment of qualifying newspaper distributors and carriers as direct sellers. Under the Senate amendment, a person engaged in the trade or business of the delivery or distribution of newspapers or shopping news (including any services that are directly related to such trade or business such as solicitation of customers or collection of receipts) qualifies as a direct seller, provided substantially all the remuneration for the performance of the services is directly related to sales or other output rather than to the number of hours worked, and the services performed by the person are performed pursuant to a written contract between such person and the service recipient and such contract provides that the person will not be treated as an employee for Federal tax purposes. The provision is intended to apply to newspaper distributors and carriers whether or not they hire others to assist in the delivery of newspapers. The provision also applies to newspaper distributors and carriers operating under either a buy-sell distribution system (i.e., where the newspaper distributors or carriers purchase the newspapers from the publisher) or an agency distribution system. For example, newspaper distributors and carriers operating under an agency distribution system who are paid based on the number of papers delivered and have an appropriate written agreement qualify as direct sellers. The status of newspaper distributors and carriers who do not qualify as direct sellers under the proposal continue to be determined under present-law rules. No inference is intended with respect to the employment status of newspaper distributors and carriers prior to the effective date of the provision.

Effective date.—The provision is effective with respect to services performed after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment. This provision is intended to clarify the worker classification issue for income and employment taxes only. The conferees do not intend this provision to have any impact whatsoever on the interpretation or applicability of Federal, State, or local labor laws.

27. ALLOW BANK COMMON TRUST FUNDS TO TRANSFER ASSETS TO REGULATED INVESTMENT COMPANIES WITHOUT TAXATION (SEC. 12875 OF THE SENATE AMENDMENT)

Present law

The common trust fund of a bank is not subject to tax and is not treated as a corporation. Each participant in a common trust fund includes his proportional share of common trust fund income, whether or not the income is distributed or distributable. Participants generally treat their admission to the fund as the purchase of an interest. Withdrawals from the fund generally are treated as the sale of an interest by the participant.

A RIC also is treated as a conduit for Federal income tax purposes. Present law is unclear as to the tax consequences when a common trust fund transfers its assets to one or more RICs.

House bill

No provision.

Senate amendment

The Senate amendment permits a common trust fund to transfer substantially all of its assets to one or more RICs without gain or loss being recognized by the fund or its participants. The fund must transfer its assets to the RICs solely in exchange for shares of the RICs, and the fund must then distribute the RIC shares to the fund's participants in exchange for the participant's interests in the fund.

The basis of any asset that is received by a RIC will be the basis of the asset in the hands of the fund prior to transfer. In addition, the basis of any RIC shares that are received by a fund participant will be an allocable portion of the participant's basis in the interests exchanged.

Effective date.—Transfers after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment.

28. REMOVE BUSINESS EXCLUSION FOR ENERGY SUBSIDIES PROVIDED BY PUBLIC UTILITIES (SEC. 13622 OF THE HOUSE BILL)

Present law

Internal Revenue Code section 136, as added by the Energy Policy Act of 1992, provides an exclusion from the gross income of a customer of a public utility for the value of any subsidy provided by the utility for the purchase or installation of an energy conservation measure with respect to a dwelling unit (as defined by sec. 280A(f)(1)). In addition, for subsidies received after 1994, section 136 provides a partial exclusion from gross income for the value of any subsidy provided by a utility for the purchase or installation of an energy conservation measure with respect to property that is not a dwelling unit. The amount of the exclusion is 40 percent of the value for subsidies received in 1995, 50 percent of the value for subsidies received in 1996, and 65 percent of the value for subsidies received after 1996.

For this purpose, an energy conservation measure is any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to property. With respect to property other than a dwelling unit, an energy conservation measure includes "specially defined energy property" (generally, property described in sec. 48(l)(5) of the Code as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

The exclusion does not apply to payments made to or from a qualified cogeneration facility or a qualifying small power production facility pursuant to section 210 of the Public Utility Regulatory Policy Act of 1978.

Section 136 denies a deduction or credit to a taxpayer (or in appropriate cases requires a reduction in the adjusted basis of property of a taxpayer) for any expenditure to the extent that a subsidy related to the expenditure was excluded from the gross income of the taxpayer.

House bill

The House bill repeals the partial exclusion for any subsidy provided by a utility for the purchase or installation of an energy conservation measure with respect to property that is not a dwelling unit.

Effective date.—The provision is effective for subsidies received after September 13, 1995, unless received pursuant to a binding written contract in effect on that date and all times thereafter.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except that the provision is effective for subsidies received after December 31, 1995, unless received pursuant to a binding written contract in effect on September 13, 1995, and all times thereafter.

29. REQUIRE TAXPAYERS TO INCLUDE RENTAL VALUE OF RESIDENCE IN INCOME WITHOUT REGARD TO PERIOD OF RENTAL (SEC. 13640 OF THE HOUSE BILL)

Present law

Gross income for purposes of the Internal Revenue Code generally includes all income from whatever source derived, including rents. The Code (sec. 280A(g)) provides a *de minimis* exception to this rule where a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year. In this case, the income from such rental is not included in gross income and no deductions arising from such rental use are allowed as a deduction.

House bill

The House bill repeals the 15-day rule of section 280A(g). It also provides that no reduction in basis is required if the taxpayer:

(1) rented the dwelling unit for less than 15 days during the taxable year and (2) did not claim depreciation on the dwelling unit for the period of rental.

Effective date.—Taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

30. ALLOW CONVERSION OF SCHOLARSHIP FUNDING CORPORATION TO TAXABLE CORPORATION (SEC. 13641 OF THE HOUSE BILL)

Present law

Qualified scholarship funding corporations are nonprofit corporations established and operated exclusively for the purpose of acquiring student loan notes incurred under the Higher Education Act of 1965 (sec. 150(d)). In addition, a qualified scholarship funding corporation must be required by its corporate charter and bylaws, or under State law, to devote any income (after payment of expenses, debt service and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States.

In general, State and local government bonds issued to finance private loans (e.g., student loans) are taxable private activity bonds. However, interest on qualified student loan bonds is tax-exempt. Qualified scholarship funding corporations are eligible issuers of qualified student loan bonds.

The Internal Revenue Code restricts the direct and indirect investment of bond proceeds in higher yielding investments and requires that profits on investments that are unrelated to the government purpose for which the bonds are issued be rebated to the United States. Special allowance payments (SAP) made by the Department of Education are treated as interest on notes and, therefore, are permitted arbitrage that need not be rebated to the United States.

Generally, a private foundation and disqualified persons may, in the aggregate, own 20 percent of the voting stock of a functionally unrelated corporation.

House bill

In general.—The House bill provides that a nonprofit student loan funding corporation may elect to cease its status as a qualified scholarship funding corporation. If the corporation meets the requirements outlined below, such an election will not cause any bond outstanding as of the date of the issuer's election and any bond issued to refund such a bond to fail to be a qualified student loan bond. Once made, an election may be revoked only with the consent of the Secretary of Treasury. After making the election, the issuer is not authorized to issue any new bonds.

Requirements.—First, upon making the election, the issuer is required to transfer all of the student loan notes to another, taxable, corporation in exchange for senior stock of such corporation within a reasonable period of time after the election is made. Immediately after the transfer, the issuer, and any other issuer who made the election, is required to hold all of the senior stock of the corporation. Senior stock is stock whose rights to dividends, liquidation or redemption rights are not inferior to those of any other class of stock and that (1) participates pro rata and fully in the equity value of any other common stock of the corporation, (2) has the right to payments receivable in liquidation prior to any other stock in the corporation, (3) upon liquidation or redemption, has a fixed right to receive the greater of (a) the fair market value of the stock at the date of liquidation or redemption or (b) the net fair market value of all assets transferred to the corporation by the issuer, and (4) has a right to require its redemption by a date which is not later than 10 years after the date that the election is made.

Second, the transferee corporation is required to assume or otherwise provide for the payment of all the qualified scholarship funding bond indebtedness of the issuer within a reasonable period after the election.

Third, immediately after the transfer, the issuer (i.e., the nonprofit student loan funding corporation) is required to become a charitable organization (described in section 501(c)(3) that is exempt from tax under section 501(a)), at least 80 percent of the members of its board of directors must be independent members, and it must hold all of the senior stock of the corporation.

Excess business holdings.—For purposes of the excess business holding restrictions imposed on a private foundation, the charity would not be required to divest its ownership in a corporation most of whose assets are student loan notes incurred under the Higher Education Act of 1965.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

31. APPLY LOOK-THROUGH RULE FOR PURPOSES OF CHARACTERIZING CERTAIN SUBPART F INSURANCE INCOME AS UNRELATED BUSINESS TAXABLE INCOME (SEC. 13642 OF THE HOUSE BILL)

Present law

An organization that is exempt from tax by reason of Code section 501(a) (e.g., a charity, business league, or qualified pension trust) is nonetheless subject to tax on its unrelated business taxable income (UBTI) (sec. 511). Unrelated business taxable income generally excludes dividend income (sec. 512(b)(1)).

Special rules apply to a tax-exempt organization described in section 501(c)(3) or (c)(4) (i.e., a charity or social welfare organization) that is engaged in commercial-type insurance activities. Such activities are treated as an unrelated trade or business and the tax-exempt organization is subject to tax on the income from such insurance activities (including investment income that might otherwise be excluded from the definition of unrelated business taxable income) under subchapter L (sec. 501(m)(2)).[82] Accordingly, a tax-exempt organization described in section 501(c)(3) or (c)(4) is generally subject to tax on its income from commercial-type insurance activities in the same manner as a taxable insurance company.

A tax-exempt organization that conducts insurance activities through a foreign corporation is not subject to U.S. tax with respect to such activities. Under the subpart F rules, the United States shareholders (as defined in sec. 951(b)) of a controlled foreign corporation (CFC) are required to include in income currently their shares of certain income of the CFC, whether or not such income is actually distributed to the shareholders. This current inclusion rule applies to certain insurance income of the CFC (sec. 953). However, income inclusions under subpart F have been characterized as dividends for unrelated business income tax purposes.[83] Accordingly, insurance income earned by the CFC that is includible in income currently under subpart F by the taxable United States shareholders of the CFC is excluded from unrelated business taxable income in the case of a shareholder that is a tax-exempt organization.

House Bill

The House bill applies a look-through rule in characterizing certain subpart F insurance income for unrelated business income tax purposes. The look-through rule applies to amounts that constitute insurance income currently includible in gross income under the subpart F rules and that are not attributable to the insurance of risks of (1) the tax-exempt organization itself, (2) tax-exempt affiliates of such organization, and (3) directors, officers, or employees of such organization or such affiliates if the insurance covers solely risks associated with the performance of services for the benefit of such organization or affiliates. Such amounts are treated as income from an unrelated trade or business to the extent such amounts would constitute income from an unrelated trade or business if received directly by the tax-exempt organization. Deductions connected with amounts treated as unrelated business taxable in-

[82] If the commercial-type insurance activities constitute a substantial part of the organization's activities, the organization will not be tax-exempt under section 501 (c)(3) or (c)(4) (sec. 501(m)(1)).

[83] The Internal Revenue Service has concluded in private letter rulings, which are not to be used or cited as precedent, that subpart F inclusions are treated as dividends received by the United States shareholder (a tax-exempt entity) for purposes of computing the shareholder's UBTI (see LTRs 9407007 (November 12, 1993), 9027051 (April 13, 1990), 9024086 (March 22, 1990), 9024026 (March 15, 1990), 8922047 (March 6, 1989), 8836037 (June 14, 1988), 8819034 (February 10, 1988)). However, the IRS issued one private ruling in which it concluded that subpart F inclusions are treated as if the underlying income were realized directly by the United States shareholder (a tax-exempt entity) for purposes of computing the shareholder's UBTI (see LTR 9043039 (July 30, 1990)). This ruling gave no explanation for the IRS's departure from the position in its prior rulings, and the IRS reiterated in a subsequent ruling the position that subpart F inclusions are characterized as dividends for purposes of computing UBTI. Moreover, the application of the look-through rule in the ruling in question did not affect the ultimate result in the ruling because the income to which the subpart F inclusion was attributable was of a type that was excludible from UBTI. The conferees believe that LTR 9043039 (July 30, 1990) is incorrect in its application of a look-through rule in characterizing income inclusions under subpart F for unrelated business income tax purposes.

come are allowed to the same extent as such deductions are allowed to a taxable entity.

Effective date.—The provision applies to amounts includible in gross income in taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with modifications. Under the conference agreement, the look-through rule applies to amounts that constitute insurance income currently includible in gross income under the subpart F rules and that are not attributable to the insurance of risks of (1) the tax-exempt organization itself, (2) certain tax-exempt affiliates of such organization, and (3) any individual who performs services for the benefit of the tax-exempt organization (or certain tax-exempt affiliates) provided that the insurance covers primarily risks associated with the individual's performance of services for the benefit of the tax-exempt organization (or tax-exempt affiliates). The conferees intend that the determination of whether insurance covers primarily risks associated with the performance of services for the benefit of the tax-exempt organization or its tax-exempt affiliates is to be based on all the facts and circumstances. The conferees further intend that a safe harbor be provided under which this "primarily" requirement will be considered to be satisfied where at least 80 percent of the services covered by the insurance are performed by the insured individual for the benefit of the tax-exempt organization or its tax-exempt affiliates.

The conference agreement clarifies that, for purposes of this provision, a tax-exempt organization is an affiliate of another tax-exempt organization if (1) the two organizations have significant common purposes and substantial common membership or (2) the two organizations have directly or indirectly substantial common direction or control.

Finally, the conferees clarify the operation of the look-through rule in the case of a CFC that insures the risks of multiple shareholders of the CFC, one or more of which are tax-exempt organizations. The specified exceptions from the look-through rule apply on a shareholder by shareholder basis. Accordingly, if the subpart F insurance income allocable to a tax-exempt organization includes both income attributable to the insurance of risks of the organization itself and income attributable to the insurance of risks of another shareholder that is not a tax-exempt affiliate of such organization, the look-through rule applies only to that portion of the income that represents income attributable to the insurance of risks of such other shareholder (and does not apply to the portion of the income that represents income attributable to the insurance of risks of the organization itself). In this regard, the conferees intend that if the CFC serves as a vehicle for the separate funding by each shareholder of its risks or liabilities for claims, without any pooling of a shareholder's risks or liabilities for claims with those of another shareholder either directly or through reinsurance, allocations that fairly reflect such arrangement will be respected for purposes of applying the look-through rule.

32. $1 MILLION COMPENSATION DEDUCTION LIMIT EXTENDED TO ALL EMPLOYEES (SEC. 12878 OF THE SENATE AMENDMENT)

Present law

Under present law, the otherwise allowable deduction for compensation paid or accrued with respect to a covered employee of a publicly held corporation is limited to no more than $1 million per year. A person is a covered employee if (1) they are the chief executive officer of the corporation, or (2) their total compensation is required to be reported for the taxable year under the Securities Exchange Act of 1934 because the employee is one of the 4 highest compensated officers for the year (other than the chief executive officer). The deduction limitation applies to (1) all remuneration for services, including cash and the cash value of all remuneration paid in a form other than cash, other than remuneration payable on a commission basis, (2) certain performance-based compensation, (3) payments to a tax-qualified retirement plan, and (4) amounts excludable from the executive's gross income (e.g., health benefits).

House bill

No provision.

Senate amendment

Under the Senate amendment, the denial of the deduction for compensation is extended to compensation of all employees, other than employees of personal service corporations. The definition of compensation subject to the deduction denial is not modified.

The Commissioner of Social Security is to increase the amount of earnings that an individual may receive and still qualify for full social security benefits by an amount which takes into account the revenues resulting from the expansion of the compensation deduction denial.

Effective date.—The expansion of the deduction denial applies to taxable years beginning after December 31, 1995, except that it does not apply to remuneration payable under a written binding contract in effect on October 25, 1995, and which was not modified thereafter in any material respect before the remuneration was paid.

Conference agreement

The conference agreement does not include the Senate amendment provision.

33. SENSE OF THE SENATE REGARDING AN INCREASE IN THE SOCIAL SECURITY EARNINGS LIMIT (SEC. 12879 OF THE SENATE AMENDMENT)

Present law

In 1995, social security beneficiaries aged 62 to 64 lose $1 in benefits for each $2 of earnings from work in excess of $8,160. Social security beneficiaries aged 65 to 69 lose $1 in benefits for each

$3 of earnings from work in excess of $11,280. These earnings limits are indexed for inflation.

House bill

No provision.

Senate amendment

The Senate amendment expresses the sense of the Senate that Congress intends to pass legislation before the end of 1995 to raise the social security earnings limit for social security beneficiaries aged 65 to 69 in a manner that will insure the financial integrity of the social security trust funds and that will be consistent with the goal of achieving a balanced Federal budget in seven years.

Conference agreement

The conference agreement does not include the Senate amendment.

34. INCREASE DEDUCTIBILITY OF BUSINESS MEAL EXPENSES FOR INDIVIDUALS SUBJECT TO FEDERAL HOURS OF SERVICE LIMITATIONS (SEC. 12880(A) OF THE SENATE AMENDMENT)

Present law

In general, 50 percent of meal and entertainment expenses incurred in connection with a trade or business that are ordinary and necessary (and not lavish or extravagant) are deductible (sec. 274). Food or beverage expenses are fully deductible provided that they are (1) required by Federal law to be provided to crew members of a commercial vessel, (2) provided to crew members of similar commercial vessels not operated on the oceans, or (3) provided on certain oil or gas platforms or drilling rigs.

House bill

No provision.

Senate amendment

The Senate amendment provides that 80 percent of meal expenses are deductible with respect to food or beverages consumed by an individual during, or incident to, any period of duty subject to the hours of service limitations of the Department of Transportation. There are four general groupings of individuals subject to these limitations. The first is certain air transportation employees, such as pilots, crew, dispatchers, mechanics, and control tower operators, pursuant to Federal Aviation Administration regulations. The second is interstate truck and bus drivers, pursuant to Department of Transportation regulations. The third is certain railroad employees, such as engineers, conductors, train crews, dispatchers, and control operations personnel, pursuant to Federal Railroad Administration regulations. The fourth is certain merchant mariners, pursuant to Coast Guard regulations.

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

Conference agreement

The conference agreement does not include the Senate amendment.

35. ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE OF CERTAIN NONFINANCIAL INSTITUTIONS (SEC. 12880(B) OF THE SENATE AMENDMENT)

Present law

For foreign tax credit purposes, taxpayers generally are required to allocate and apportion interest expense between U.S. and foreign source income based on the proportion of the taxpayer's total assets in each location. Such allocation and apportionment is required to be made for affiliated groups (as defined in sec. 864(e)(5)) as a whole rather than on a subsidiary-by-subsidiary basis. However, certain types of financial institutions that are members of an affiliated group are treated as members of a separate affiliated group for purposes of the allocation and apportionment of interest expense (sec. 864(e)(5)(B)). Section 1215(c)(5) of the Tax Reform Act of 1986 (P.L. 99–514, 100 Stat. 2548) includes a targeted rule which treats a certain corporation as a financial institution for this purpose.

House bill

No provision.

Senate amendment

The Senate amendment repeals the targeted rule of section 1215(c)(5) of the Tax Reform Act of 1986.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment.

36. ROLLOVER OF GAIN FROM SALE OF FARM ASSETS TO INDIVIDUAL RETIREMENT PLANS (SEC. 12881 OF THE SENATE AMENDMENT)

Present law

Under present law, gain recognized upon the sale of farm assets is generally includible in the gross income of the taxpayer. There is no provision under present law for deferring the recognition of such gain by making contributions to an asset rollover account.

House bill

No provision.

Senate amendment

In general

Under the Senate amendment, a taxpayer who has a qualified net farm gain from the sale of a qualified farm asset may, at the taxpayer's election, recognize the gain from such sale only to the extent the gain exceeds the contributions to one or more asset rollover accounts of the taxpayer for the taxable year in which such sale occurs.

Contributions to an asset rollover account

No deductions are permitted with respect to contributions to an asset rollover account. Contributions to an asset rollover account are subject to an annual limit and a lifetime limit. Under the annual limit, the total contributions that can be made to an asset rollover account in a taxable year cannot exceed 100 percent of the lesser of (1) the qualified net farm gain for the taxable year, or (2) an amount equal to the number of years the taxpayer is a qualified farmer times $10,000 ($20,000 for years the taxpayer files a joint return). The Secretary may reduce the 100 percent in the preceding sentence to a lower percentage to the extent necessary if the reduction in Federal receipts as a result of this provision exceeds the increases in Federal receipts resulting from the amendments made by section 12882 (disposition of stock in domestic corporations by 10-percent foreign shareholders) and section 12883 (limitation on treaty benefits) of the Balanced Budget Reconciliation Act of 1995 (as passed by the Senate). Qualified net farm gain is, for the taxable year, the lesser of (1) the net capital gain of the taxpayer, or (2) the net capital gain only taking into account gain in connection with a disposition of a qualified farm asset. Qualified farm asset means an asset used by a qualified farmer in the active conduct of the trade or business of farming. A qualified farmer is a taxpayer who (1) during the 5-year period ending on the date of the disposition of the qualified farm asset materially participated in the trade or business of farming, and (2) owned (or the taxpayer's spouse owned) 50 percent or more of such trade or business during such 5-year period. Under the lifetime limit on contributions to an asset rollover account, the aggregate amount for all taxable years that can be contributed to all asset rollover accounts by an individual cannot exceed $500,000 ($250,000 in the case of a separate return filed by a married individual), reduced by the amount by which the aggregate value of assets held in all individual retirement arrangements ("IRAs") by the individual exceeds $100,000. The lifetime limit is applied as of the close of the taxable year in which a contribution to an asset rollover account is made. To the extent contributions to an asset rollover account exceed the annual or lifetime limits, such excess contributions are subject to a 6-percent excise tax.

Definition and tax treatment of an asset rollover account

In general, an asset rollover account is treated in the same manner as an IRA. Consequently, earnings are not currently includible in income. Amounts in an asset rollover account are includible in income when withdrawn. In addition, the 10-percent additional tax on early distributions applies, unless the distribution is made after the individual attains age 59-½, dies, or becomes disabled, or the distribution is paid in the form of a life annuity. Amounts in an asset rollover account may be rolled over to another asset rollover account without income inclusion.

Reporting

Any individual who makes a contribution to an asset rollover account or receives a distribution from such account is required to include such information on the individual's Federal income tax return as the Secretary may prescribe. Such information is the same information required by the Secretary to be reported by individuals making nondeductible contributions to an IRA.

Effective date

The provision applies to sales and exchanges after the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment.

37. TAXATION OF CERTAIN STOCK GAINS OF FOREIGN PERSONS (SECS. 12882 AND 12883 OF THE SENATE AMENDMENT)

Present law

Disposition of stock in domestic corporations

Foreign persons generally are subject to a 30-percent U.S. tax on dividends received from a U.S. corporation. Foreign persons generally are not subject to U.S. tax on gain realized on the disposition of stock in a U.S. corporation (other than a U.S. real property holding corporation), unless the gain is effectively connected with the conduct of a trade or business in the United States. Many U.S. income tax treaties contain provisions that preclude the imposition of U.S. tax on such gains realized by treaty-country residents.

Limitation on treaty benefits

The United States has entered into bilateral income tax treaties with many foreign countries. A function served by these treaties is to reduce the U.S. tax on U.S. source income earned by a resident of a treaty country. Tax treaty abuse (or "treaty shopping") occurs when a person who is not a resident of either country seeks certain benefits under the income tax treaty between the two countries. Newer treaties negotiated by the United States usually contain a "Limitation on Benefit" article that may deny treaty benefits to foreign persons that wish to "treaty-shop" the U.S. treaty network. However, not all of the U.S. income tax treaties now in force contain such an article.

House bill

No provision.

Senate amendment

Disposition of stock in domestic corporations

Under the Senate amendment, where a foreign person owns, or has owned at any time during the previous 5 years, 10 percent or more of the stock in a U.S. corporation, gain or loss from the disposition of the stock is subject to U.S. income tax at graduated rates. Constructive ownership rules apply in determining whether a foreign person is a 10-percent shareholder. In addition, certain ownership interests are treated as stock for purposes of this provision.

Certain nonrecognition provisions that would otherwise apply to dispositions of U.S. stock are suspended, and the Secretary of the Treasury is authorized to prescribe regulations providing the extent to which nonrecognition provisions will apply for purposes of this provision. Special alternative minimum tax rules apply in the case of nonresident aliens who recognize net gains on dispositions of stock that are subject to this provision.

This tax generally is collected through withholding at the rate of 10 percent of the proceeds of the disposition giving rise to the liability. Exceptions apply in cases of dispositions of stock that is regularly traded on an established securities market. Amounts withheld in excess of the tax liability are refundable.

This provision does not override any current U.S. income tax treaty obligations. However, in certain cases where a treaty prevents the imposition of U.S. tax on stock gains of a qualified resident of a treaty country (as defined below), the provision treats as dividends gain resulting from any distribution in liquidation or redemption that would (but for the treaty) be subject to U.S. tax. Dividend treatment only applies to such gain to the extent of the earnings and profits of the distributing corporation which are attributable to the stock with respect to which the distribution is made.

Effective date.—The provision generally is effective for dispositions after December 31, 1995. The withholding requirements are applicable only to dispositions occurring 6 months or more after the date of enactment.

Limitation on treaty benefits

The Senate amendment imposes a qualified resident requirement as a prerequisite for the reduction of U.S. tax on a foreign entity under any treaty. For this purpose, a foreign entity that is a resident of a foreign country is a qualified resident of such country unless (1) 50 percent or more (by value) of the interests in such entity are owned (directly or indirectly) by individuals who are not residents of such country or citizens or residents of the United States, or (2) 50 percent or more of the entity's income is used (directly or indirectly) to meet liabilities to persons who are not residents of the foreign country or citizens or residents of the United States. Special rules apply in the case of entities that are publicly traded or that are wholly-owned by publicly-traded corporations. The Secretary of the Treasury may, in certain cases, treat a foreign entity as a qualified resident.

In addition, the Senate amendment provides that no person is entitled to benefits granted by the United States under a treaty with respect to any income that bears a significantly lower tax under the laws of the other treaty country than similar income arising from sources within such foreign country derived by residents of such foreign country.

Effective date.—The provision takes effect on January 1, 1996, and applies to any treaty whether entered into before, on, or after such date.

Conference agreement

The conference agreement does not include the Senate amendment.

38. TREATMENT OF BAD DEBT DEDUCTIONS OF THRIFT INSTITUTIONS (H.R. 2494 AND SEC. 12884 OF THE SENATE AMENDMENT)

Present Law and Background

Reserve method of accounting for bad debts of thrift institutions

Generally, a taxpayer engaged in a trade or business may deduct the amount of any debt that becomes wholly or partially worthless during the year (the "specific charge-off" method of sec. 166). Certain thrift institutions (building and loan associations, mutual savings banks, or cooperative banks) are allowed deductions for bad debts under rules more favorable than those granted to other taxpayers (and more favorable than the rules applicable to other financial institutions). Qualified thrift institutions may compute deductions for bad debts using either the specific charge-off method or the reserve method of section 593. To qualify for this reserve method, a thrift institution must meet an asset test, requiring that 60 percent of its assets consist of "qualifying assets" (generally cash, government obligations, and loans secured by residential real property). This percentage must be computed at the close of the taxable year, or at the option of the taxpayer, as the annual average of monthly, quarterly, or semiannual computations of similar percentages.

If a thrift institution uses the reserve method of accounting, it must establish and maintain a reserve for bad debts and charge actual losses against the reserve, and is allowed a deduction for annual additions to restore the reserve to its permitted balance. Under section 593, a thrift institution annually may elect to calculate its addition to its bad debt reserve under either (1) the "percentage of taxable income" method applicable only to thrift institutions, or (2) the "experience" method that also is available to small banks.

Under the "percentage of taxable income" method, a thrift institution generally is allowed a deduction for an addition to its bad debt reserve equal to 8 percent of its taxable income (determined without regard to this deduction and with additional adjustments). Under the experience method, a thrift institution generally is allowed a deduction for an addition to its bad debt reserve equal to the greater of: (1) an amount based on its actual average experience for losses in the current and five preceding taxable years, or (2) an amount necessary to restore the reserve to its balance as of the close of the base year. For taxable years beginning before 1988, the "base year" was the last taxable year before the most recent adoption of the experience method (i.e., generally, the last year the taxpayer was on the percentage of taxable income method). For taxable years beginning after 1987, the base year is the last taxable year beginning before 1988. Prior to 1988, computing bad debts under a "base year" rule allowed a thrift institution to claim a deduction for bad debts for an amount at least equal to the institution's actual losses that were incurred during the taxable year.

Bad debt methods of commercial banks

A small commercial bank (i.e., one with adjusted bases of assets of $500 million or less) may use the experience method or the specific charge-off method for purposes of computing its deduction for bad debts. A large commercial bank only may use the specific charge-off method of section 166. If a small bank becomes a large bank, it must recapture its existing bad debt reserve (i.e., include the amount of the reserve in income) through one of two elective methods. Under the 4-year recapture method, the bank generally includes 10 percent of the reserve in income in the first taxable year, 20 percent in the second year, 30 percent in the third year, and 40 percent in the fourth year. Under the cut-off method, the bank generally neither restores its bad debt reserve to income nor may it deduct losses relating to loans held by the bank as of the date of the required change in the method of accounting. Rather, the amount of such losses are charged against and reduce the existing bad debt reserve; any losses in excess of the reserve are deductible. Any reserve balance in excess of the balance of related loans is includible in income.

Recapture of bad debt reserves by thrift institutions

If a thrift institution becomes a commercial bank, or if the institution fails to satisfy the 60-percent qualified asset test, it is required to change its method of accounting for bad debts and, under proposed Treasury regulations,[84] is required to recapture its bad debt reserve. The percentage-of-taxable-income portion of the reserve generally is included in income ratably over a 6-taxable year period. The experience method portion of the reserve is not restored to income if the former thrift institution qualifies as a small bank. If the former thrift institution is treated as a large bank, the experience method portion of the reserve is restored to income ratably over a 6-taxable year period, or under the 4-year recapture method or the cut-off method described above.

In addition, a thrift institution may be subject to a form of reserve recapture even if the institution continues to qualify for the percentage of taxable income method. Specifically, if a thrift institution distributes to its shareholders an amount in excess of its post-1951 earnings and profits, such excess is deemed to be distributed from the institution's bad debt reserve and is restored to income. In the case of any distribution in redemption of stock or in partial or complete liquidation of an institution, the distribution is treated as first coming out of the bad debt reserves of the institution (sec. 593(e)).

Proposed banking legislation (H.R. 2491)

Treatment of thrift institutions under H.R. 2491

Title II (Chapter 2, subtitle B) of H.R. 2491, which passed the House of Representatives on October 26, 1995, would require savings and loan institutions to forego their Federal thrift charters

[84] Prop. Treas. reg. sec. 1.593–13.

and become either State-chartered depository institutions or Federally-chartered banks. Under proposed Treasury regulations, if a thrift institution becomes a bank, the institution would be required to recapture all or a portion of its bad debt reserve. As described in detail below, the conferees understand that such recapture would require the institution immediately to record, for financial accounting purposes, a current or deferred tax liability for the amount of bad debt recapture for which liabilities previously had not been recorded (generally, with respect to the pre-1988 reserves), regardless of when such recapture is taken into account for Federal income tax purposes. The conferees further understand that the recording of this liability generally would decrease the regulatory capital of the new bank.

Financial accounting treatment of tax reserves of bad debts of thrift institutions

In general, for financial accounting purposes, a corporation must record a deferred tax liability with respect to items that are deductible for tax purposes in a period earlier than they are expensed for book purposes. The deferred tax liability signifies that, although a corporation may be reducing its current tax expense because of the accelerated tax deduction, the corporation will become liable for tax in a future period when the timing item "reverses" (i.e., when the item is expensed for book purposes but for which the tax deduction had already been allowed). Under the applicable accounting standard (Accounting Principles Board Opinion 23), deferred tax liabilities generally were not required for pre-1988 tax deductions attributable to the bad debt reserve method of thrift institutions because the potential reversal of the bad debt reserve was indefinite (i.e., generally, a reversal only would occur by operation of sec. 593(e), a condition within the control of a thrift institution). However, the establishment of 1987 as a base year increased the likelihood of bad debt reserve reversals with respect to post-1987 additions to the reserve and the conferees understand that thrift institutions generally have recorded deferred tax liabilities for these additions under the current generally accepted accounting principles.[85]

[85] For taxable years beginning before 1988, the base year balance of a thrift institution was the reserve balance whenever the institution changed from one bad debt method to another (e.g., from the percentage of taxable income method to the experience method). How the establishment of 1987 as a permanent base year changed the nature of the bad debt reserves of thrift institutions between pre-1988 years and post-1987 years (which, in turn, contributed to the change in the financial accounting treatment of such reserves) can be illustrated by the following example:

Assume that a thrift institution ("T") always had used the percentage of taxable income ("PHI") method to deduct bad debts through 1986 when its reserve balance was $10,000. Further assume that in 1987, T: (1) has insufficient taxable income to use the PHI method, (2) has actual bad debt losses of $1,000, and (3) under the six-year average formula of the experience method, would be allowed a deduction of $900. Under these facts, T would be allowed a bad debt deduction of $1,000 (rather than $900) in 1987 because $1,000 is the amount necessary to restore the reserve to its base year (PHI) level. Specifically, in 1987, T would charge the year-end 1986 reserve of $10,000 for the $1,000 actual loss and then add (and deduct) $1,000 to the reserve so that the balance of the reserve at year end 1987 is once again $10,000. Thus, T's former PHI deductions, which gave rise to the $10,000 reserve balance, generally would not be restored to income (unless subject to sec. 593(e)).

Further assume that in 1988, T has sufficient taxable income to be allowed a PHI deduction of $1,500, increasing the balance of the reserve to $11,500 at year-end 1988. Further assume that in 1989, T: (1) again has insufficient taxable income to use the PHI method, (2) has actual bad debts of $2,500, and (3) under the six-year average formula of the experience method would be allowed a deduction of $900. Under these facts, T would be allowed a deduction of $1,000

House bill

No provision in H.R. 2491. However, on November 7, 1995, the Committee on Ways and Means reported, with an amendment, H.R. 2494 (the "Thrift Charter Conversion Act of 1995").[86] The provisions of H.R. 2494 are described below.

Repeal of section 593

The House bill repeals the section 593 reserve method of accounting for bad debts by thrift institutions, effective for taxable years beginning after 1995. Under the House bill, thrift institutions that qualify as small banks are allowed to utilize the experience method applicable to such institutions, while thrift institutions that are treated as large banks are required to use only the specific charge-off method.

Treatment of recapture of bad debt reserves

In general

A thrift institution required to change its method of computing reserves for bad debts will treat such change as a change in a method of accounting, initiated by the taxpayer, and having been made with the consent of the Secretary of the Treasury. Any section 481(a) adjustment required to be taken into account with respect to such change generally will be determined solely with respect to the "applicable excess reserves" of the taxpayer. The amount of applicable excess reserves shall be taken into account ratably over a 6-taxable year period, beginning with the first taxable year beginning after 1995, subject to the residential loan requirement described below. In the case of a thrift institution that becomes a "large bank" (as determined under sec. 585(c)(2)), the amount of the institution's applicable excess reserves will be the excess of (1) the balance of its reserves described in section 593(c)(1) (i.e., its supplemental reserve for losses on loans, its reserve for losses on qualifying real property loans, and its reserve for losses on nonqualifying loans) as of the close of its last taxable year beginning before January 1, 1996, over (2) the balance of such reserves as of the close of its last taxable year beginning before January 1, 1988 (i.e., the "pre-1988 reserves"). Similar rules are provided for "small banks" and for small banks that subsequently become large banks.

The balance of the pre-1988 reserves will continue to be subject to the provisions of present-law section 593(e) (requiring recapture in the case of certain excess distributions to, and redemptions of, shareholders).

Residential loan requirement

Under a special rule, if the taxpayer meets the "residential loan requirement" for any taxable year beginning after December 31, 1995, the recapture of the applicable excess reserves otherwise

(i.e., the amount necessary to in the restore the reserve to its base year (year-end 1987) level). Specifically, T would charge the year-end 1988 reserve balance of $11,500 for the $2,500 actual loss and then add (and deduct) $1,000 to the reserve to restore the balance to the $10,000 base year amount. Thus, T's post-1987 PHI deduction of $1,500 is restored to income (i.e., T actually had losses of $2,500 in 1989, but only was allowed to deduct $1,000).

[86] H. Rept. 104–324.

to be taken into account as a section 481(a) adjustment for such year will be suspended. A taxpayer generally meets the residential loan requirement if, for any taxable year, the principal amount of residential loans made by the taxpayer during the year is not less than its base amount. A taxpayer will be deemed to meet the residential loan requirement for any taxable year beginning after December 31, 1997, if the taxpayer met the requirement for the two preceding years (determined without the application of this special, two-out-of-three rule). For the first taxable year beginning after December 31, 1995, the "base amount" for a taxpayer generally means the average of the principal amounts of the residential loans made by the taxpayer during the six most recent taxable years beginning before January 1, 1996. For taxable years beginning after December 31, 1996, the base amount is indexed for inflation.

Treatment of special assessments

The House bill also provides for the deductibility of certain special assessments to be paid by thrift institutions to the Savings Association Insurance Fund ("SAIF") pursuant to a provision of Title II of H.R. 2491.

Effective date

The provision of H.R. 2494 relating to the deduction for bad debts by thrift institutions generally is effective for taxable years beginning after December 31, 1995. The provision of H.R. 2494 relating to the treatment of the special assessments to be paid to the SAIF is effective upon enactment.

Senate amendment

The Senate amendment contains a Sense of the Senate that, in order to further national banking policy and assist in the conversion of thrift charters to bank charters, Code section 593 (relating to reserves for losses on loans) should be repealed and appropriate relief should be granted for the pre-1988 portion of any bad debt reserves of a thrift institution.

Conference agreement

The conference agreement includes the following.

Repeal of section 593

The conference agreement repeals the section 593 reserve method of accounting for bad debts by thrift institutions, effective for taxable years beginning after 1995. Thrift institutions that qualify as small banks are allowed to utilize the experience method applicable to such institutions, while thrift institutions that are treated as large banks are required to use only the specific charge-off method. Thus, the percentage of taxable income method of accounting for bad debts is no longer available for any financial institution. The conference agreement also repeals the following present-law provisions that only apply to thrift institutions to which section 593 applies: (1) the denial of a portion of certain tax credits to a thrift institution (sec. 50(d)(1)); (2) the special rules with respect to the foreclosure of property securing loans of a thrift institution (sec. 595); (3) the reduction in the dividends received reduction of a thrift institution (sec. 596); and (4) the ability of a thrift institution to use a net operating loss to offset its income from a residual interest in a REMIC.

Treatment of recapture of bad debt reserves

In general

A thrift institution required to change its method of computing reserves for bad debts will treat such change as a change in a method of accounting, initiated by the taxpayer, and having been made with the consent of the Secretary of the Treasury.[87] Any section 481(a) adjustment required to be taken into account with respect to such change generally will be determined solely with respect to the "applicable excess reserves" of the taxpayer. The amount of applicable excess reserves shall be taken into account ratably over a 6-taxable year period, beginning with the first taxable year beginning after 1995, subject to the residential loan requirement described below. In the case of a thrift institution that becomes a "large bank" (as determined under sec. 585(c)(2)), the amount of the institution's applicable excess reserves generally is the excess of (1) the balance of its reserves described in section 593(c)(1) (i.e., its supplemental reserve for losses on loans, its reserve for losses on qualifying real property loans, and its reserve for losses on nonqualifying loans) as of the close of its last taxable year beginning before January 1, 1996, over (2) the balance of such reserves as of the close of its last taxable year beginning before January 1, 1988 (i.e., the "pre-1988 reserves").[88] Thus, a thrift institution that is treated as a large bank generally is required to recapture its post-1987 additions to its bad debt reserves, whether such additions are made pursuant to the percentage of taxable income method or the experience method. The timing of this recapture may be delayed for a two-year period to the extent the residential loan requirement described below applies.

In the case of a thrift institution that becomes a "small bank" (as determined under sec. 585(c)(2)), the amount of the institution's applicable excess reserves will be the excess of (1) the balance of its reserves described in section 593(c)(1) as of the close of its last taxable year beginning before January 1, 1996, over (2) the greater of the balance of: (a) its pre-1988 reserves or (b) what the institution's reserves would have been at the close of its last taxable year beginning before January 1, 1996, had the institution always used the experience method described in section 585(b)(2)(A) (i.e., the six-year average method). For purposes of the future application of section 585, the beginning balance of the small bank's reserve for its first taxable year beginning after December 31, 1995, will be the

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[87] A thrift institution that uses a reserve method described in sec. 593 will be deemed to have changed its method of computing reserves for bad debts even though such institution will be allowed to use the reserve method of section 585. Similarly, a large thrift institution will be deemed to have changed its method of computing reserves for bad debts even though such institution used the experience-method portion of sec. 593 in lieu of the percentage-of-taxable-income method of sec. 593.

[88] The balance of a taxpayer's pre-1988 reserves is reduced if the taxpayer's loan portfolio had decreased since 1988. The balance of a taxpayer's pre-1988 reserves is reduced by multiplying such balance by the ratio of the balance of the taxpayer's loans outstanding at the close of the last taxable beginning before 1996, to the balance of the taxpayer's loans outstanding at the close of the last taxable beginning before 1988. This reduction is required for both large and small banks.

greater of the two amounts described in (2) in the preceding sentence, and the balance of the reserve at the close of the base year (for purposes of sec. 585(b)(2)(B)) will be the amount of its pre-1988 reserves. The residential loan requirement described below also applies to small banks. If such small bank later becomes a large bank, any section 481(a) adjustment amount required to be taken into account under section 585(c)(3) will not include any portion of the bank's pre-1988 reserve. Similarly, if the bank elects the cutoff method to implement its conversion to large bank status, the amount of the reserve against which the bank charges its actual losses will not include any portion of the bank's pre-1988 reserve and the amount by which the pre-1988 reserve exceeds actual losses will not be included in gross income.

The balance of the pre-1988 reserves is subject to the provisions of present-law section 593(e) (requiring recapture in the case of certain excess distributions to, and redemptions of, shareholders). Thus, section 593(e) will continue to apply to an institution regardless of whether the institution becomes a bank or remains a thrift institution. In addition, the balance of the pre-1988 reserve will be treated as a tax attribute to which section 381 applies. Treasury regulations are expected to provide rules for the continued application of section 593(e) in the case of mergers, acquisitions, spin-offs, and other reorganizations of thrift and other institutions. The conferees believe that any such regulations should provide that if the stock of an institution with a pre-1988 reserve is acquired by another depository institution, the pre-1988 reserve will not be restored to income by reason of the acquisition. Similarly, if an institution with a pre-1988 reserve is merged or liquidated tax-free into a bank, the pre-1988 reserve should not be restored to income by reason of the merger or liquidation.[89] Rather, the bank will inherit the pre-1988 reserve and the post-1951 earnings and profits of the former thrift institution and section 593(e) will apply to the bank as if it were a thrift institution. That is, the pre-1988 reserve will be restored into income in the case of any distribution in redemption of the stock of the bank or in partial or complete liquidation of the bank following the merger or liquidation. In the case of any other distribution, the pre-1988 reserve will not be restored to income unless the distribution is in excess of the sum of the post-1951 earnings and profits inherited from the thrift institution and the post-1913 earnings and profits of the acquiring bank.[90] Treasury regulations should address the case where the shareholders of an institution with a pre-1988 reserve are "cashed out" in a taxable merger of the institution and a bank. Such regulations may provide that the pre-1988 reserve may be restored to income if such redemption represents a concealed distribution from the former thrift institution. For example, cash received by former thrift shareholders pursuant to a taxable reverse merger may represent a concealed distribution if, immediately preceding the merg-

[89] The issue of whether section 593(e) applies in cases where a thrift institution is merged into a bank generally does not arise under present law because such merger results in a charter change and, under proposed Treasury regulations, requires full bad debt reserve recapture.

[90] If the acquiring bank is a former thrift itself and the pre-1988 reserves of neither institution are restored to income pursuant to the merger, the conferees expect that the pre-1988 reserves and the post-1951 earnings and profits of the two institutions will be combined for purposes of the continued application of sec. 593(e) with respect to the combined institution.

er, the acquiring bank had no available resources to distribute and its existing debt structure, indenture restrictions, financial condition, or regulatory capital requirements precluded it from borrowing money for purposes of making the cash payment to the former thrift shareholders. Treasury regulations also should address the treatment of boot received in a tax-free reorganization. No inference is intended as to the application of section 593(e) to these and similar transactions under present law.

Further, if a taxpayer no longer qualifies as a bank (as defined by sec. 581), the balance of the taxpayer's pre-1988 reserve is restored to income ratably over a 6-year period, beginning in the taxable year the taxpayer no longer qualifies as a bank.

Residential loan requirement

Under a special rule, if the taxpayer meets the "residential loan requirement" for a taxable year, the recapture of the applicable excess reserves otherwise required to be taken into account as a section 481(a) adjustment for such year will be suspended. A taxpayer meets the residential loan requirement if, for the taxable year, the principal amount of residential loans made by the taxpayer during the year is not less than its base amount. The residential loan requirement is applicable only for taxable years that begin after December 31, 1995, and before January 1, 1998, and must be applied separately with respect to each such year. Thus, all taxpayers are required to recapture their applicable excess reserves within six, seven, or eight years after the effective date of the provision.

The "base amount" of a taxpayer means the average of the principal amounts of the residential loans made by the taxpayer during the six most recent taxable years beginning before January 1, 1996. At the election of the taxpayer, the base amount may be computed by disregarding the taxable years within that 6-year period in which the principal amounts of loans made during such years were highest and lowest. This election must be made for the first taxable year beginning after December 31, 1995, and applies to the succeeding taxable year unless revoked with the consent of the Secretary of the Treasury or his delegate.

For purposes of the residential loan requirement, a loan will be deemed to be "made" by a financial institution to the extent the institution is, in fact, the principal source of the loan financing. Thus, any loan only can be "made" once. The conferees expect that loans "made" by a financial institution may include, but are not limited to, loans (1) originated directly by the institution through its place of business or its employees, (2) closed in the name of the institution, (3) originated by a broker that acts as an agent for the institution, and (4) originated by another person (other than a financial institution) and that are acquired by the institution pursuant to a preexisting, enforceable agreement to acquire such loans. In addition, Treasury regulations also may provide that loans "made" by a financial institution may include loans originated by another person (other than a financial institution) acquired by the institution soon after origination if such acquisition is pursuant to a customary practice of acquiring such loans from such person. A loan acquired by a financial institution from another financial institution generally will be considered to be made by the transferor rather than the transferee of the loan; however, such loan may be completely disregarded if a principal purpose of the transfer was to allow the transferor to meet the residential loan requirement. A loan may be considered to be made by a financial institution even if such institution has an arrangement to transfer such loan to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

For purposes of the residential loan requirement, a "residential loan" is a loan described in section 7701(a)(19)(C)(v) (generally, loans secured by residential real and church property and certain mobile homes),[91] but only to the extent the loan is made to the owner of the property to acquire, construct, or improve the property. Thus, mortgage refinancings and home equity loans are not considered to be residential loans, except to the extent the proceeds of the loan are used to acquire, construct, or improve qualified residential real property. The conferees understand that pursuant to the Home Mortgage Disclosure Act, financial institutions are required to disclose the purpose for which loans are made. The conferees further understand that for purposes of this disclosure, institutions are required to classify loans as home purchase loans, home improvement loans, refinancings, and multifamily dwelling loans (whether for purchase, improvement or refinancing of such property). The conferees expect that taxpayers (and the Secretary of the Treasury in promulgating guidance) may take such reporting into account, and make such adjustments as are appropriate,[92] in determining: (1) whether or not a loan qualifies as a "residential loan" and (2) whether the institution "made" the loan. A taxpayer must use consistent standards for determining whether loans qualify as residential loans made by the institution both for purposes of determining its base amount and for purposes of determining whether it met the residential loan requirement for a taxable year.

The residential loan requirement is determined on a controlled group basis. Thus, for example, if a controlled group consists of two thrift institutions with applicable excess reserves that are wholly-owned by a bank, the residential loan requirement will be met (or not met) with respect to both thrift institutions by comparing the principal amount of the residential loans made by all three members of the group during the taxable year to the group's base amount. The group's base amount will be the average principal amount of residential loans made by all three members of the group during the base period. The election to disregard the high and low taxable years during the 6-year base period also would be applied on a controlled group basis (i.e., generally by treating the members of the group as one taxpayer so that all members of the

[91] For this purpose, as under present law, if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan will be deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). In additions, loans made to finance the acquisition or development of land will be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary of the Treasury, there is a reasonable assurance that the property will become residential real property within a period of three years from the date of acquisition of the land.

[92] For example, adjustments will be required with respect to the reporting of multifamily dwellings in order to distinguish home purchase, home improvement, and refinancing loans.

group must join in the election, and the same corresponding years of each member would be so disregarded).

The balance of a taxpayer's applicable excess reserve is treated as a tax attribute to which section 381 applies. Thus, if an institution with an applicable excess reserve is acquired in a tax-free reorganization, the balance of such reserve will not be immediately restored to income but will continue to be subject to the residential loan requirement in the hands of the acquirer. Treasury regulations may provide rules for the application of the residential loan requirement in the case of mergers, acquisitions, and other reorganizations of thrift and other institutions. The conferees expect that if a financial institution joins or merges into (or leaves) a group of financial institutions, the base amount of the acquiring (or remaining) group will be appropriately adjusted to reflect the base amount of the acquired (or departing) institution for purposes of determining whether the group meets the residential loan requirement for the year of the acquisition (or departure) and subsequent years. Similarly, if a controlled group of institutions had made an election to disregard its high and low years in computing its base amount, it is anticipated that such election shall be binding on any institution that subsequently joins the group and the election shall be applied to the new member by disregarding the high and low years of the new member even if such years do not correspond to the years applicable to the other members of the group.

Treatment of conversions to credit unions

The conference agreement provides that if a thrift institution to which the repeal of section 593 applies becomes a credit union (as described in sec. 501(c)(14)(A)), the credit union will be treated as a institution that is not a bank and any section 481(a) adjustment required to be included in gross income will be treated as derived from an unrelated trade or business. Thus, if a thrift institution becomes a credit union in its first taxable year beginning after December 31, 1995, the entire balance of the institution's bad debt reserve will be included in income, and subject to tax, over a 6-year period beginning with such taxable year. No inference is intended as to the Federal income tax treatment of any other aspect of the conversion of a financial institution to a credit union.

Treatment of special assessments

The conferees did not adopt the provision of H.R. 2494 that provided for the deductibility of certain special assessments to be paid to the SAIF. The conferees understand that it is the view of the Department of the Treasury that such payments would be deductible under present law.[93] The conferees understand that the Treasury analysis is based, in part, upon the fact that the proposed special assessments are designed to provide SAIF coverage for 1996. As such, the conferees believe that a special statutory provision providing deductibility is unnecessary and the special assess-

[93] See, e.g., the testimony of Cynthia G. Beerbower, Deputy Assistant Secretary (Tax Policy) Department of the Treasury, on H.R. 2494 before the House Committee on Ways and Means, October 26, 1995.

ments should give rise to deductions to which section 172(f) does not apply.[94]

Effective date

The repeal of section 593 is effective for taxable years beginning after December 31, 1995. The repeal of section 595 is effective for property acquired in taxable years beginning after December 31, 1995.

39. LIMITATION ON STATE INCOME TAXATION OF CERTAIN PENSION INCOME (H.R. 394 AND SEC. 12944 OF THE SENATE AMENDMENT)

Present Law

Certain State laws provide that some or all retirement income is included in income for State income tax purposes if the income was earned within the State, even though the individual resides outside the State when the retirement income is actually received. Some States achieve this result through general rules that tax income earned within the State, whereas others have explicit provisions regarding retirement income.

House bill

No provision in H.R.2491. However, on October 31, 1995, the House Committee on the Judiciary ordered favorably H.R. 394, which would amend title 4 of the United States Code (entitled "Flag and Seal, Seat of Government, and the States"), to prohibit any State, including any political subdivision of a State, the District of Columbia, and the possessions of the United States, from imposing income tax on any retirement income of any individual who is not a resident or domiciliary of the State. For this purpose, retirement income would include any income from a qualified retirement or annuity plan, a simplified employee pension, a tax-sheltered annuity plan, an eligible deferred compensation plan of a tax-exempt or State and local government, an individual retirement arrangement, a governmental plan, a trust created before June 25, 1959, and that is part of a plan funded only by employee contributions, and certain retired or retainer pay of a member or former member of the uniformed services. The term retirement income also would include income from a nonqualified deferred compensation plan, provided such income is part of a series of substantially equal periodic payments made over (1) the life or life expectancy of the recipient (or the joint lives or life expectancies of the recipient and the recipient's beneficiary), or (2) a period not less than 10 years. The preceding sentence would not apply to a plan, program, or arrangement which provides benefits in excess of certain limitations contained in the Code on benefits provided under qualified retirement plans. The provision would not apply to any retirement income received by an individual who renounces his or her United States citizenship for reasons of avoiding Federal and State income taxation (as determined by the Attorney General).

[94] Under present law, net operating losses can be carried back three years. Section 172(f) allows "specified liability losses' to be carried back ten years. Specified liability losses include amounts allowable as deductions with respect to product liabilities or with respect to certain acts (or failures to act) that occurred more than three years ago.

The Attorney General would publish quarterly a list of such individuals in the Federal Register. The provision would have no effect on the application of the provision in the Employee Retirement Income Security Act of 1974 ("ERISA") that generally preempts State laws.

Effective date.—H.R. 394 would be effective with respect to amounts received after December 31, 1994.

Senate amendment

The Senate amendment amends title 4 of the United States Code (entitled "Flag and Seal, Seat of Government, and the States"), to prohibit any State, including any political subdivision of a State, the District of Columbia, and the possessions of the United States, from imposing income tax on any retirement income of any individual who is not a resident or domiciliary of the State. For this purpose, retirement income includes any income from a qualified retirement or annuity plan, a simplified employee pension, a tax- sheltered annuity plan, an eligible deferred compensation plan of a tax-exempt or State and local government, an individual retirement arrangement, a governmental plan, a trust created before June 25, 1959, and that is part of a plan funded only by employee contributions, and certain retired or retainer pay of a member or former member of the uniformed services. The term retirement income also includes income from a nonqualified deferred compensation plan, provided such income is part of a series of substantially equal periodic payments made over (1) the life or life expectancy of the recipient (or the joint lives or life expectancies of the recipient and the recipient's beneficiary), or (2) a period not less than 10 years. The provision has no effect on the application of the provision in the Employee Retirement Income Security Act of 1974 ("ERISA") that generally preempts State laws.

Effective date.—The provision applies to amounts received after December 31, 1994.

Conference agreement

The conference agreement does not include the Senate amendment.

40. COAL INDUSTRY RETIREE HEALTH SECURITY (SEC. 13901 OF THE HOUSE BILL)

Present law

The financing of retiree health benefits previously provided by the United Mine Workers of America ("UMWA") 1950 and 1974 Benefit Funds was substantially revised by the Energy Policy Act of 1992 (H.R. 776, P.L. 102-486), enacted October 24, 1992. The relevant provisions, contained in the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), created two new UMWA retiree health benefit funds and completely changed the financing mechanism. The two funds, known as the UMWA Combined Benefit Fund (the "Combined Fund") and the UMWA 1992 Benefit Plan, service beneficiaries who retired on or before September 30, 1994. The Combined Fund provides benefits to coal miners (and their beneficiaries) who retired on or before July 20, 1992, and the 1992

UMWA Benefit Plan provides benefits to coal miners (and their beneficiaries) who retired between July 21, 1992, and September 30, 1994, and (1) would have been eligible for benefits under the Combined Fund had they retired earlier, or (2) whose last employer does not provide the benefits promised under a 1978 or later collective bargaining agreement. No provision was made for employees who retired or will retire after September 30, 1994. Future retirees will remain dependent on the provisions of future collective bargaining agreements.

Under the Coal Act, which supersedes the retiree health benefits financing provisions of the 1988 National Bituminous Coal Wage Agreement (''NBCWA''), a company is charged an insurance premium based on the number of beneficiaries assigned to the company in its role as the retiree's "last signatory employer." Under what are referred to as the "reachback" provisions of the Coal Act, companies responsible for paying premiums include any company that had signed any NBCWA since 1946 or any related company as defined under the Act. To cover the costs associated with beneficiaries who cannot be assigned, up to $70 million per year is transferred into the Combined Fund. The first three transfers came from the surplus in the UMWA 1950 Pension Plan. Subsequent transfers will be made from the interest earnings of the Federal Abandoned Mine Reclamation Fund. If costs for unassigned beneficiaries exceed the annual transfer, they can be allocated to the companies in proportion to their share of assigned beneficiaries. If, for any plan year, there is a shortfall in the Combined Fund, the insurance premiums payable by companies for the following plan year are proportionally increased.

The per beneficiary insurance premium is calculated each year by the Commissioner of the Social Security Administration, and is based on a base insurance premium increased each year for medical inflation. The base insurance premium is equal to the payments from the 1950 UMWA and 1974 UMWA Benefit Plans for health benefits (including administrative costs) for the plan year beginning July 1, 1991, divided by the number of individuals covered by such plans. The base insurance premium was determined initially by the Secretary of Health and Human Services to be equal to $2,116.67 per beneficiary. There has been some dispute regarding the initial determination of the base insurance premium, and on June 2, 1995, a United States District Court in Alabama granted summary judgment on behalf of eight companies holding that the Secretary of Health and Human Services misapplied the provisions of the Coal Act in initially determining the base insurance premium.[95] This decision is currently on appeal.

Under present law, the Coal Act does not require the trustees of the Combined Fund to disclose any information pertaining to the financial solvency and operational status of the Combined Fund to companies required to pay insurance premiums to the Combined Fund.

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[95] *National Coal Association v. Shalala* (No. CV94–H–780–S, Slip opinion (N.D. Ala. June 2, 1995). As a result of this decision, the Social Security Administration, which is responsible for calculating the annual insurance premium, set the annual insurance premium for the 1996 Combined Fund year (beginning October 1, 1995) at $2,200.53 per beneficiary. According to the Social Security Administration, if the decision is overturned, the per beneficiary insurance premium would rise to $2,454.05.

House bill

The House bill exempts from the Coal Act's provisions companies that did not sign the 1988 NBCWA (or an agreement (other than the National Coal Mine Construction Agreement and the Coal Haulers' Agreement) containing pension and health care contribution and benefit provisions identical to the 1988 NBCWA) and companies who made withdrawal liability payments under the terms of the 1988 NBCWA. Such companies are no longer obligated to pay insurance premiums to the Combined Fund or the 1992 UMWA Benefit Plan. Beneficiaries allocated to these companies are reallocated to the unassigned pool. To the extent the insurance premiums associated with these unassigned beneficiaries are not paid from amounts transferred from the Federal Abandoned Mine Reclamation Fund, the insurance premiums will be allocated to the companies that signed the 1988 NBCWA (or an agreement (other than the National Coal Mine Construction Agreement and the Coal Haulers' Agreement) containing pension and health care contribution and benefit provisions identical to the 1988 NBCWA) in proportion to their share of assigned beneficiaries. As under present law, if, for any plan year, there is a shortfall in the Combined Fund, the insurance premiums payable by companies for the following plan year are proportionally increased.

The House bill also provides that the trustees of the Combined Fund must provide to any company required to pay insurance premiums to the Combined Fund, within 30 days of a written request, information regarding the financial and operational status of the Combined Fund.

Effective date.—The provision is effective with respect to plan years beginning after September 30, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

41. MODIFICATION OF LUXURY EXCISE TAX ON AUTOMOBILES

Present law

Present law imposes a 10-percent excise tax on that amount of an automobile's sales price in excess of $32,000. The $32,000 threshold is indexed for inflation. The tax is scheduled to expire after December 31, 1999.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement extends the luxury excise tax on automobiles through December 31, 2002, and reduces the rate of tax by one percentage point per year beginning in 1996. Thus, the rate of tax for 1996 is nine percent; for 1997, eight percent; for 1998, seven percent; for 1999, six percent; for 2000, five percent; for 2001, four percent; and for 2002, three percent. The conference agreement provides that the luxury tax on automobiles expires after December 31, 2002.

Effective date.—The provision is effective on January 1, 1996.

X. Technical Corrections Provisions

A. TECHNICAL CORRECTIONS TO THE REVENUE RECONCILIATION ACT OF 1990 (SEC. 6602 OF H.R. 1215)

House bill

1. Application of the 2.5-cents-per-gallon tax on fuel used in rail transportation to States and local governments (sec. 6602(b)(2))

The House bill clarifies that the 2.5-cents-per-gallon tax on fuel used in rail transportation does not apply to such uses by States and local governments.

2. Small winery production credit and bonding requirements (secs. 6602(b)(5), (6), and (7))

The House bill clarifies that wine produced by eligible small wineries may be transferred without payment of tax to bonded warehouses that become liable for payment of the wine excise tax without losing credit eligibility.

3. Deposits of Railroad Retirement Tax Act taxes (sec. 6602(c)(3))

The House bill conforms the Internal Revenue Code to the provision in the Railroad Retirement Solvency Act of 1993 that applies the deposit rules for income taxes withheld from employees' wages and FICA taxes to Railroad Retirement Tax Act taxes.

4. Treatment of salvage and subrogation of property and casualty insurance companies (sec. 6602(c)(4))

The House bill makes adjustments to the calculation of a property and casualty insurance company's earnings and profits, so as to equalize the treatment of companies that did, and those that did not, take into account estimated salvage and subrogation recoverable in determining losses incurred prior to 1990.

5. Information with respect to certain foreign-owned or foreign corporations: Suspension of statute of limitations during certain judicial proceedings (sec. 6602(c)(5))

The House bill modifies the provisions in sections 6038A and 6038C that suspend the statute of limitations to clarify that the suspension applies to any taxable year the determination of the amount of tax imposed for which is affected by the transaction or item to which the summons relates.

6. Rate of interest for large corporate underpayments (secs. 6602(c)(6) and (7))

The House bill provides that an IRS notice that is later withdrawn because it was issued in error does not trigger the higher rate of interest applicable to certain corporate underpayments.

7. Research credit provision: Effective date for repeal of special proration rule (sec. 6602(d)(1))

The bill repeals for all taxable years ending after December 31, 1989, the special proration rule for certain qualified research provided for by the 1989 Act.

8. Energy tax provision: Alternative minimum tax adjustment based on energy preferences (secs. 6602(e)(1) and (4))

The House bill clarifies that the amount of alternative tax net operating loss that is utilized in any taxable year is to be appropriately adjusted to take into account the amount of special energy deduction claimed for that year.

The House bill also provides that the ACE adjustment for taxable years beginning in 1991 and 1992 is to be computed without regard to the special energy deduction.

9. Estate tax freezes (sec. 6602(f))

Chapter 14 of the Code contains rules that supersede the willing buyer, willing seller standard for valuation of preferred interest in corporations and partnerships, property held in trust, and term interests in property.

The House bill provides that an applicable retained interest conferring a distribution right to qualified payments with respect to which there is no liquidation, put, call, or conversion right is valued without regard to section 2701. The House bill also provides that the retention of such right gives rise to potential inclusion in the transfer tax base.

The House bill modifies the definition of junior equity interest by granting regulatory authority to treat a partnership interest with rights that are junior with respect to either income or capital as a junior equity interest. The House bill also modifies the definition of distribution right by replacing the junior equity interest exception with an exception for a right under an interest that is junior to the rights of the transferred interest.

The House bill modifies the rules for electing into or out of qualified payment treatment. A dividend payable on a periodic basis and at a fixed rate under a cumulative preferred stock held by the transferor is treated as a qualified payment unless the transferor elects otherwise. If held by an applicable family member, such stock is not treated as a qualified payment unless the holder so elects. In addition, a transferor or applicable family member holding any other distribution right may treat such right as a qualified payment to be paid in the amounts and at the times specified in the election.

The House bill grants the Treasury Department regulatory authority to make subsequent transfer tax adjustments to reflect the inclusion of unpaid amounts with respect to a qualified payment. The House bill treats a transfer to a spouse falling under the annual exclusion the same as a transfer qualifying for the marital deduction. The bill also clarifies that the inclusion continues to apply if an applicable family member transfers a right to qualified payments to the transferor. Under the House bill, the election to treat a distribution as giving rise to an inclusion results in an inclusion only with respect to the payment for which the election is made.

The House bill conforms section 2702 to existing regulatory terminology by substituting the term "incomplete gift" for "incomplete transfer." In addition, the House bill limits the exception for incomplete gifts to instances in which the entire gift is incomplete. The Treasury Department is granted regulatory authority, however, to create additional exceptions not inconsistent with the purposes of the section.

10. Conforming amendments to the repeal of the General Utilities doctrine (secs. 6602(g)(1) and (2))

The House bill makes three conforming changes to the Code with respect to the repeal of the General Utilities doctrine. Two of the changes affect section 1248: the first includes a reference to section 355(c)(1) and the second clarifies that, with respect to any transaction in which a U.S. person is treated as realizing gain from the sale or exchange of stock of a controlled foreign corporation, the U.S. person shall be treated as having sold or exchanged the stock for purposes of applying section 1248. The third change repeals section 897(f) as deadwood.

11. Prohibited transaction rules (sec. 6602(g)(3))

The House bill conforms the statutory language to legislative intent by providing that transactions that are exempt from the prohibited transaction rules of the Employee Retirement Income Security Act of 1974 ("ERISA") by reason of ERISA section 408(b)(12) are also exempt from the prohibited transaction rules of the Code.

12. Effective date of LIFO adjustment for purposes of computing adjusted current earnings (sec. 6602(g)(4))

The House bill clarifies that the calculation of the LIFO adjustment of the adjusted current earnings component of the corporate alternative minimum tax would be effective with respect to adjustments occurring in taxable years beginning after December 31, 1989.

13. Low-income housing tax credit (sec. 6602(g)(5))

The House bill repeals a 1990 technical correction regarding treatment of low-income housing buildings financed with tax-exempt bonds. The House bill provides, however, that pre-1989 Act law will apply to a bond-financed building if the owner of the building establishes to the satisfaction of the Secretary of the Treasury reasonable reliance upon the 1990 technical correction.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provisions.

B. TECHNICAL CORRECTIONS TO THE REVENUE RECONCILIATION ACT OF 1993 (SEC. 6603 OF H.R. 1215)

House bill

1. Treatment of full-time students under the low-income housing credit (sec. 6603(b))

The House bill provides that the full-time student provision is effective on the date of enactment of the Revenue Reconciliation Act of 1993 ("1993 Act").

2. Indexation of threshold applicable to excise tax on luxury automobiles (sec. 6603(c))

The House bill corrects the application of the indexing adjustment applicable to the threshold above which the excise tax on luxury automobiles is to apply so that the adjustment calculated for a given calendar year applies for that calendar year rather than in the subsequent calendar year. The House bill is effective on the date of enactment of this act.

3. Indexation of the limitation based on modified adjusted gross income for income from United States savings bonds used to pay higher education tuition and fees (sec. 6603(d))

The House bill corrects the indexing of the $60,000 ($40,000 for taxpayers filing as single) threshold to provide that the thresholds be indexed for inflation after 1989.

4. Reporting and notification requirements for lobbying and political expenditures of tax-exempt organizations (sec. 6603(g))

Tax-exempt organizations that incur political expenditures are subject to tax under section 527(f). Section 6033(e) requires tax-exempt organizations (other than charities) to (1) report on their annual information returns both the total amount of their lobbying and political expenditures, and the total amount of dues payments allocable to such expenditures, and (2) provide notice to their members of the portion of dues allocable to lobbying and political expenditures (so that such amounts are not deductible to members), or the organization may elect to pay a proxy tax on its lobbying and political expenditures, up to the amount of its dues receipts. The House bill amends section 6033(e) to clarify that any political expenditures on which tax is paid pursuant to section 527(f) are not subject to the reporting and notification requirements of section 6033(e). In addition, the House bill clarifies that the reporting and notification requirements of section 6033(e) apply to organizations exempt from tax under section 501(a), other than charities described in section 501(c)(3).

5. Estimated tax rules for certain tax-exempt organizations (sec. 6603(h))

The House bill clarifies that the Revenue Reconciliation Act of 1993 did not change the method by which a tax-exempt organization annualizes its current year tax liability for purposes of avoiding an underpayment of estimated tax.

6. Current taxation of certain earnings of controlled foreign corporations—application of foreign tax credit limitation (sec. 6603(I)(l))

The House bill clarifies that a U.S. shareholder's inclusion of a controlled foreign corporation's earnings invested in excess passive assets is treated like a dividend for purposes of the foreign tax credit limitation.

7. Current taxation of certain earnings of controlled foreign corporations—measurement of accumulated earnings (sec. 6603(I)(2))

The House bill clarifies that the accumulated earnings and profits of a controlled foreign corporation taken into account for purposes of determining the foreign corporation's earnings invested in excess passive assets do not include any deficit in accumulated earnings and profits, and do not include current earnings (which are taken into account separately).

8. Current taxation of certain earnings of controlled foreign corporations—aggregation and look-through rules (sec. 6603(I)(3))

The House bill clarifies that, within the regulatory authority provided to the Secretary of the Treasury under the 1993 Act, regulations are specifically authorized to coordinate the CFC group treatment and look-through treatment applicable for purposes of determining a foreign corporation's earnings invested in excess passive assets. Pending the promulgation of guidance by the Secretary, it is intended that taxpayers be permitted to coordinate such treatment using any reasonable method for taking assets into account only once, so long as the method is consistently applied to all controlled foreign corporations (whether or not members of any CFC group) in all taxable years.

9. Treatment of certain leased assets for PFIC purposes (sec. 6603(I)(5))

The House bill clarifies that, in the case of any item of property leased by a foreign corporation and treated as an asset actually owned by the foreign corporation in measuring the assets of the foreign corporation for purposes of the PFIC asset test, the amount taken into account with respect to the leased property is the amount determined under the 1993 Act's special measurement rule, which is based on the unamortized portion of the present value of the payments under the lease for the use of the property.

10. Amortization of goodwill and certain other intangibles (sec. 6603(k))

The House bill clarifies the antichurning rules of the 1993 Act amortization of intangibles provision. It is clarified that when a taxpayer and its related parties have made an election to apply the 1993 Act to all acquisitions after July 25, 1991, the antichurning rules will not apply when property acquired from an unrelated party after July 25, 1991 (and not subject to the antichurning rules in the hands of the acquirer) is transferred to a taxpayer related to the acquirer after the date of enactment of the 1993 Act.

11. Empowerment zones and eligibility of small farms for tax incentives (sec. 6603(l))

The bill provides that the $500,000 asset test for determining whether a farm is eligible for section 179 expensing in an empowerment zone and expanded tax-exempt financing benefits in an empowerment zone or enterprise community is applied based on assets of the farm at the end of the current taxable year.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, except with respect to the indexation of the threshold applicable to the excise tax on luxury automobiles (item B.2., above). With respect to the indexation of the threshold applicable to the excise tax on luxury automobiles, the conference agreement follows the House bill.

C. OTHER TAX TECHNICAL CORRECTIONS (SEC. 6604 OF H.R. 1215)

House bill

1. Hedge bonds (sec. 6604(b))

The House bill clarifies that the 30-day exception for temporary investments of investment earnings applies to amounts (i.e., principal and earnings thereon) temporarily invested during the 30-day period immediately preceding redemption of the bonds as well as such periods preceding reinvestment of the proceeds.

2. Withholding on distributions from U.S. real property holding companies (sec. 6604(c))

The House bill clarifies that withholding requirements under section 1445 apply to any section 301 distribution to a foreign person by a domestic corporation that is or was a U.S. real property holding corporation which distribution is not made out of the corporation's earnings and profits and is therefore treated as an amount received in a sale or exchange of a U.S. real property interest. The provision is effective for distributions made after the date of enactment of the bill.

3. Treatment of credits attributable to working interests in oil and gas properties (sec. 6604(d))

A working interest in an oil and gas property which does not limit the liability of the taxpayer is not a "passive activity" for purposes of the passive loss rules (sec. 469). However, if any loss from an activity is treated as not being a passive loss by reason of being from a working interest, any net income from the activity in subsequent years is not treated as income from a passive activity, notwithstanding that the activity may otherwise have become passive with respect to the taxpayer.

The House bill clarifies that any credit attributable to a working interest in an oil and gas property, in a taxable year in which the activity is no longer treated as not being passive activity, will not be treated as attributable to a passive activity to the extent of any tax allocable to the net income from the activity for the taxable year.

4. Clarification of passive loss disposition rule (sec. 6604(e))

The House bill clarifies the rule relating to the computation of the overall loss allowed upon the disposition of a passive activity under the passive loss rules.

5. Estate tax unified credit allowed nonresident aliens under treaty (sec. 6604(f)(1))

The House bill clarifies that in determining the pro rata unified credit required by treaty, property exempted by the treaty from U.S. estate tax is not treated as situated in the United States. The provision is effective on the date of enactment.

6. Limitation on deduction for certain interest paid by corporation to related person (sec. 6604(f)(2))

The House bill clarifies that, under the earnings stripping provision, excess interest carried forward from a year in which the debt-equity ratio threshold is exceeded may be deducted in a subsequent year in which that threshold is not exceeded, but only to the extent that such interest would not otherwise be treated as excess interest expense in the carryforward year. The provision is effective as if included in the amendments made by section 7210(a) of the 1989 Act.

7. Branch-level interest tax (sec. 6604(f)(3))

The House bill clarifies that where an interest expense of a foreign corporation is allocable to U.S. effectively connected income, but that interest expense would not have been fully deductible for tax purposes under another Code provision had it been paid by a U.S. corporation, such interest is nonetheless treated for branch level interest tax purposes like a payment by a U.S. corporation to a foreign corporate parent. Similarly, with regard to the Treasury's regulatory authority to treat an interest payment by a foreign corporation's U.S. branch as though not paid by a U.S. person for source and withholding purposes, the bill clarifies that the authority extends to interest payments in excess of those reasonably expected to be allocable to U.S. effectively connected income of the foreign corporation. These provisions are effective as if they were made by the Tax Reform Act of 1986 ("1986 Act").

8. Determination of source in case of sales of inventory property (sec. 6604(f)(4))

The House bill clarifies that, to the extent that the Secretary of the Treasury had general regulatory authority to provide rules for the sourcing of income from the sales of personal property prior to the 1986 Act, the Secretary of the Treasury retains that authority under present law with respect to inventory property. The provision is effective as if it were included in the 1986 Act.

9. Repeal of obsolete provisions (sec. 6604(f)(5))

The House bill repeals as obsolete the information reporting requirements of sections 6038 and 6038A relating to section 453C.

10. Clarification of certain stadium bond transition rule in Tax Reform Act of 1986 (sec. 6604(g))

The House bill permits the residual interest in the stadium currently held by the City of Cleveland to be assigned to Cuyahoga County, Ohio (the county in which both Cleveland and the stadium are located) because of a change in Ohio State law prior to issuance of the bonds. The House bill does not extend the time for issuing the bonds or otherwise affect the amount of bonds or the location or design of the stadium.

11. Health care continuation rules (sec. 6604(h))

The 1989 Act amended the health care continuation rules to provide that if a covered employee is entitled to Medicare and within 18 months of such entitlement separates from service or has a reduction in hours, the duration of continuation coverage for the spouse and dependents is 36 months from the date the covered employee became entitled to Medicare. One possible unintended interpretation of the statutory language, however, would permit continuation coverage for up to 54 months. The House bill amends the Code (sec. 4980B), title I of the Employee Retirement Income Security Act of 1974 (sec. 602), and the Public Health Service Act (sec. 2202(2)(A)), to limit the continuation coverage in such cases to no more than 36 months. The provision is effective for plan years beginning after December 31, 1989.

12. Taxation of excess inclusions of a residual interest in a REMIC for taxpayers subject to alternative minimum tax with net operating losses (sec. 6604(I))

The House bill provides the following three rules for determining the alternative minimum taxable income of a taxpayer that is not a thrift institution that holds residual interests in a REMIC: (1) the alternative minimum taxable income of such a taxpayer is computed without regard to the REMIC rule that taxable income cannot be less than the amount of excess inclusions; (2) the alternative minimum taxable income of such a taxpayer for a taxable year cannot be less than the excess inclusions of the residual interests for that year; and (3) the amount of any alternative minimum tax net operating loss deduction of such a taxpayer is computed without regard to any excess inclusions. The provision is effective for all taxable years beginning after December 31, 1986, unless the taxpayer elects to apply the rules of the bill only to taxable years beginning after the date of enactment.

13. Application of harbor maintenance tax to Alaska and Hawaii ship passengers (sec. 6604(j))

The House bill clarifies that the harbor maintenance tax does not apply to passenger fares where the passengers are transported on U.S. flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters (i.e., leaving and returning to a port in the same State without stopping elsewhere). The provision is effective as of April 1, 1987 (the effective date of the tax).

14. Modify effective date provision relating to the Energy Policy Act of 1992 (sec. 6604(k))

The House bill corrects several cross-references in the Energy Policy Act of 1992, and also clarifies the relationship between the basis adjustment rules for the electric vehicle credit (sec. 30(d)(1) and the alternative minimum tax.

15. Determination of unrecovered investment in annuity contract (sec. 6604(m))

In the case of an annuity contract with a refund feature, the House bill modifies the definition of the unrecovered investment in the contract, so that the entire investment in the contract can be recovered tax-free.

16. Election by parent to claim unearned income of certain children on parent's return (sec. 6604(n))

The House bill provides for adjustments for inflation, effective for taxable years beginning after December 31, 1994.

17. Exclusion from income for combat zone compensation (sec. 6604(o)(4))

The House bill changes obsolete references to "combat pay" to references to "combat zone compensation."

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provisions.

D. ADDITIONAL TAX TECHNICAL CORRECTIONS (SECS. 13401–13405 OF THE HOUSE BILL)

House bill

1. Reporting of real estate transactions (sec. 13401)

The House bill clarifies that real estate reporting persons may take into account the cost of complying with the reporting requirements of Code section 6045 in establishing charges for their services, so long as a separately listed charge for such costs is not made.

2. Clarification of denial of deduction for stock redemption expenses (sec. 13402)

The House bill clarifies that amounts properly allocable to indebtedness on which interest is deductible and properly amortized over the term of that indebtedness are not subject to the provision of section 162(k) denying a deduction for any amount paid or incurred by a corporation in connection with the redemption of its stock. This clarification is effective as if included in the 1986 Act.

In addition, the House bill clarifies that the rules of section 162(k) apply to any acquisition of its stock by a corporation or by a party that has a relationship to the corporation described in section 465(b)(3)(C)(which applies a more than 10-percent relationship test in certain cases). These clarifications apply to amounts paid or incurred after September 13, 1995.

3. Clarification of depreciation class for certain energy property (sec. 13403)

The House bill clarifies that solar or wind property owned by a public utility may qualify as 5-year MACRS property.

4. Treatment of certain veterans' reemployment rights (sec. 13405)

The House bill conforms the Internal Revenue Code provisions relating to tax-qualified retirement plans to the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), which provides for the rights of reemployed veterans. Thus, under the House bill, the tax-qualified status of a plan will not be affected merely because the plan provides benefits to a reemployed veteran as required or authorized by USERRA. The provision is effective as of December 12, 1994, the effective date of the benefits-related provisions of USERRA.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provisions.

E. TREAT QUALIFIED FOOTBALL COACHES PLAN AS MULTIEMPLOYER PENSION PLAN FOR PURPOSES OF THE INTERNAL REVENUE CODE

(SEC. 6604(L) OF THE HOUSE BILL AND SEC. 12705 OF THE SENATE AMENDMENT)

Present law

Under present law, a tax-qualified pension plan (including a qualified cash or deferred arrangement) must be maintained for the exclusive benefit of the employees and their beneficiaries covered under the plan.

The American Football Coaches Association ("AFCA") is a tax-exempt organization described in section 501(c)(6) of the Code. The members of the AFCA include college coaches, athletic directors, and high school coaches. The participating members of the AFCA are not employees of the organization. The AFCA maintains a cash or deferred arrangement (i.e., a "401(k) plan") on behalf of participating members.

The Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Continuing Appropriations for Fiscal Year 1988, provides that, for purposes of the labor law provisions of ERISA, a qualified football coaches plan generally is treated as a multiemployer plan and may include a qualified cash or deferred arrangement. Under ERISA, a qualified football coaches plan is defined as any defined contribution plan established and maintained by an organization described in Code section 501(c)(6), the membership of which consists entirely of individuals who primarily coach football as full-time employees of 4-year colleges or universities, if the organization was in existence on September 18, 1986. This definition is generally intended to apply to the AFCA.

However, the Omnibus Budget Reconciliation Act of 1987 provided that certain provisions of ERISA are not applicable in interpreting the Internal Revenue Code, except to the extent specifically provided in the Code or as determined by the Secretary of the Treasury.

The Internal Revenue Service determined that the cash or deferred arrangement maintained by the AFCA is not a qualified cash or deferred arrangement under the Internal Revenue Code. In making this determination, the IRS also observed that the AFCA plan may also violate a number of provisions of the Code. For example, the Code requires that a qualified plan be maintained for the benefit of employees, but the coaches are not employees of the AFCA.

House bill

Under the House bill, a correction to the Continuing Appropriations for Fiscal Year 1988 provides that a qualified football coaches plan (as defined in ERISA) is eligible to maintain a qualified cash or deferred arrangement under the Internal Revenue Code on behalf of the football coaches belonging to the AFCA.

Effective date.—The provision generally is effective as if included in the Continuing Appropriations for Fiscal Year 1988 (i.e., years beginning after December 22, 1987).

Senate amendment

Same as the House bill, except that in order for the plan to be reinstated as a qualified football coaches plan, a $25,000 excise tax is imposed on the plan.

Effective date.—Same as the House bill, except that the excise tax is required to be paid in the first plan year beginning after the date of enactment.

Conference agreement

The conference agreement does not include the House bill or Senate amendment provision.

XI. Simplification Provisions Relating to Individuals

1. PROVISIONS RELATING TO ROLLOVER OF GAIN ON SALE OF PRINCIPAL RESIDENCE (SECS. 14101–14102 OF THE HOUSE BILL)

Present law

In general.—No gain is recognized on the sale of a principal residence if a new residence at least equal in cost to the sales price of the old residence is purchased and used by the taxpayer as his or her principal residence within a specified period of time (sec. 1034). This replacement period generally begins two years before and ends two years after the date of sale of the old residence. The basis of the replacement residence is reduced by the amount of any gain not recognized on the sale of the old residence by reason of section 1034.

Multiple rollovers.—In general, nonrecognition treatment is available only once during any two-year period. In addition, if the taxpayer purchases more than one residence during the replacement period and such residences are each used as the taxpayer's principal residence within two years after the date of sale of the old residence, only the last residence so used is treated as the replacement residence.

Special rules apply, however, if residences are sold in order to relocate for employment reasons. First, the number of times nonrecognition treatment is available during a two-year period is not limited. Second, if a residence is sold within two years after the sale of the old residence, the residence sold is treated as the last residence used by the taxpayer and thus as the only replacement residence.

Rollovers in the case of divorce or separation.—The determination whether property is used by a taxpayer as a principal residence depends upon all the facts and circumstances in each case, including the good faith of the taxpayer. No safe harbor is provided for sales of principal residences incident to divorce or marital separation.

House bill

Multiple rollovers.—Gain is rolled over from one residence to another residence in the order the residences are purchased and used, regardless of the taxpayer's reasons for the sale of the old residence. In addition, gain may be rolled over more than once within a two-year period. Thus, the rules that formerly applied only if a taxpayer sold his residence in order to relocate for employment purposes will apply in all cases. As under present law, the basis of each succeeding residence is reduced by the amount of gain not recognized on the sale of the prior residence.

Rollovers in the case of divorce or separation.—The House bill provides a safe harbor in the determination of principal residence in certain cases incident to divorce or marital separation. Specifically, the House bill provides that a residence is treated as the taxpayer's principal residence at the time of sale if (1) the residence is sold pursuant to a divorce or marital separation and (2) the taxpayer used such residence as his or her principal residence at any time during the two-year period ending on the date of sale.

Effective date.—Sales of old residences (within the meaning of sec. 1034) after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. ONE-TIME EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE FOR CERTAIN SPOUSES (SEC. 14103 OF THE HOUSE BILL)

Present law

In general, a taxpayer may exclude from gross income up to $125,000 of gain from the sale or exchange of a principal residence if the taxpayer (1) has attained age 55 before the sale, and (2) has used the residence as a principal residence for three or more years of the five years preceding the sale. This election is allowed only once in a lifetime unless all previous elections are revoked. For these purposes, sales on or before July 26, 1978 are not counted against the once in a lifetime limit.

House bill

The House bill allows an exclusion to an individual who otherwise qualifies for an exclusion under section 121 of the Code but for a marriage to a spouse with an existing election in effect. The exclusion will only be available if the individual held the property which is the subject of the exclusion for at least three years prior to marrying the spouse with the existing election.

Effective date.—Sales or exchanges after September 13, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. PAYMENT OF TAXES BY COMMERCIALLY ACCEPTABLE MEANS (SEC. 14111 OF THE HOUSE BILL)

Present law

Payment of taxes may be made by checks or money orders, to the extent and under the conditions provided by regulations.

House bill

The House bill allows the IRS to accept payment by any commercially acceptable means that the Secretary deems appropriate, to the extent and under the conditions provided in Treasury regulations.

Effective date.—Nine months after the date of enactment. The IRS may, in this interim period, conduct internal tests and negotiate with card issuers, but may not accept credit or debit cards for payment of tax liability.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

4. SIMPLIFIED FOREIGN TAX CREDIT LIMITATION FOR INDIVIDUALS (SEC. 14112 OF THE HOUSE BILL)

Present law

In order to compute the foreign tax credit, a taxpayer computes foreign source taxable income and foreign taxes paid in each of the applicable separate foreign tax credit limitation categories. In the case of an individual, this requires the filing of IRS Form 1116, designed to elicit sufficient information to perform the necessary calculations.

House bill

The House bill allows individuals with no more than $200 ($400 in the case of married persons filing jointly) of creditable foreign taxes, and no foreign source income other than passive income, to elect a simplified foreign tax credit limitation equal to the lesser of 25 percent of the individual's foreign source gross income or the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year. For this purpose, passive income is defined to include all types of income that is foreign personal holding company income under the subpart F rules, provided that the income is shown on a payee statement furnished to the individual. Under the election, a credit is allowed only for taxes shown on a payee statement.

Effective date.—Taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

5. TREATMENT OF PERSONAL TRANSACTIONS BY INDIVIDUALS UNDER FOREIGN CURRENCY RULES (SEC. 14113 OF THE HOUSE BILL)

Present law

When a U.S. taxpayer with a U.S. dollar functional currency makes a payment in a foreign currency, gain or loss (referred to as "exchange gain or loss") arises from any change in the value of the foreign currency relative to the U.S. dollar between the time the currency was acquired (or the obligation to pay was incurred) and the time that the payment is made. The 1986 Act provisions designed to clarify the treatment of currency transactions, primarily found in section 988, apply to transactions entered into by an individual only to the extent that expenses attributable to such transactions will be deductible under section 162 (as a trade or business expense) or section 212 (as an expense of producing income, other than expenses incurred in connection with the determination, collection, or refund of taxes). Therefore, the principles of pre-1986 law continue to apply to personal currency transactions.

House bill

In a case where an individual acquires nonfunctional currency and then disposes of it in a personal transaction, and where exchange rates have changed in the intervening period, the House bill provides for nonrecognition of an individual's resulting exchange gain provided that such gain does not exceed $200. The House bill does not change the treatment of resulting exchange losses.

Effective date.—Taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

6. TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS (SEC. 14114 OF THE HOUSE BILL)

Present law

A taxpayer who uses his or her automobile for business purposes may deduct the business portion of the actual operation and maintenance expenses of the vehicle, plus depreciation (subject to the limitations of sec. 280F). Alternatively, the taxpayer may elect to utilize a standard mileage rate in computing the deduction allowable for business use of an automobile that has not been fully depreciated. Under this election, the taxpayer's deduction equals the applicable rate multiplied by the number of miles driven for business purposes and is taken in lieu of deductions for depreciation and actual operation and maintenance expenses.

An employee of the U.S. Postal Service may compute his deduction for business use of an automobile in performing services involving the collection and delivery of mail on a rural route by using, for all business use mileage, 150 percent of the standard mileage rate.

House bill

The House bill repeals the special rate for Postal Service employees of 150 percent of the standard mileage rate. In its place, the House bill provides that the rate of reimbursement provided by the Postal Service to rural letter carriers is considered to be equivalent to their expenses. The rate of reimbursement that is considered to be equivalent to their expenses is the rate of reimbursement contained in the 1991 collective bargaining agreement, which may in the future be increased by no more than the rate of inflation.

Effective date.—Taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

7. EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDED FROM GROSS INCOME (SEC. 14115 OF THE HOUSE BILL)

Present law

Gross income does not include certain combat pay of members of the Armed Forces (Code sec. 112). If enlisted personnel serve in a combat zone during any part of any month, military pay for that month is excluded from gross income. In the case of commissioned officers, these exclusions from income are limited to $500 per month of military pay.

There is no income tax withholding with respect to military pay for a month in which a member of the Armed Forces of the United States is entitled to the benefits of section 112 (sec. 3401(a)(2)). With respect to enlisted personnel, this income tax withholding rule parallels the exclusion from income under section 112: there is total exemption from income tax withholding and total exclusion from income. With respect to officers, however, the withholding rule is not parallel: there is total exemption from income tax withholding, although the exclusion from income is limited to $500 per month.

House bill

The House bill makes the income tax withholding exemption rules parallel to the rules providing an exclusion from income for combat pay.

Effective date.—Remuneration paid after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

8. TREATMENT OF TRAVELING EXPENSES OF CERTAIN FEDERAL EMPLOYEES ENGAGED IN CRIMINAL INVESTIGATIONS (SEC. 14116 OF THE HOUSE BILL)

Present law

Unreimbursed ordinary and necessary travel expenses paid or incurred by an individual in connection with temporary employment away from home are generally deductible, subject to the two-percent floor on miscellaneous itemized deductions. Travel expenses paid or incurred in connection with indefinite employment away from home, however, are not deductible. A taxpayer's employment away from home in a single location is indefinite rather than temporary if it lasts for one year or more; thus, no deduction is permitted for travel expenses paid or incurred in connection with such employment (sec. 162(a)). If a taxpayer's employment away from home in a single location lasts for less than one year, whether such employment is temporary or indefinite is determined on the basis of the facts and circumstances.

House bill

The one-year limitation with respect to deductibility of expenses while temporarily away from home does not include any period during which a Federal employee is certified by the Attorney General (or the Attorney General's designee) as traveling on behalf of the Federal Government in a temporary duty status to investigate or provide support services for the investigation of a Federal crime. Thus, expenses for these individuals during these periods are fully deductible, regardless of the length of the period for which certification is given (provided that the other requirements for deductibility are satisfied).

Effective date.—Taxable years ending after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

XII. PENSION SIMPLIFICATION PROVISIONS

A. SIMPLIFIED DISTRIBUTION RULES (SECS. 14201–14204 OF THE HOUSE BILL AND SECS. 12911–12914 OF THE SENATE AMENDMENT)

Present law

In general, a distribution of benefits from a tax-favored retirement arrangement (i.e., a qualified plan) generally is includible in gross income in the year it is paid or distributed under the rules relating to the taxation of annuities. A qualified plan includes a qualified pension plan, a qualified annuity plan, and a tax-sheltered annuity contract (sec. 403(b) annuity).

Lump-sum distributions

Lump-sum distributions from qualified plans and annuities are eligible for special 5-year forward averaging. In general, a lump-sum distribution is a distribution within one taxable year of the balance to the credit of an employee that becomes payable to the recipient first, on account of the death of the employee, second, after the employee attains age 59½, third, on account of the employee's separation from service, or fourth, in the case of self-employed individuals, on account of disability. Lump-sum treatment is not available for distributions from a tax-sheltered annuity.

A taxpayer is permitted to make an election with respect to a lump-sum distribution received on or after the employee attains age 59½ to use 5-year forward income averaging under the tax rates in effect for the taxable year in which the distribution is made. In general, this election allows the taxpayer to pay a separate tax on the lump-sum distribution that approximates the tax that would be due if the lump-sum distribution were received in 5 equal installments. If the election is made, the taxpayer is entitled to deduct the amount of the lump-sum distribution from gross income. Only one such election on or after age 59½ may be made with respect to any employee.

$5,000 exclusion for employer-provided death benefits

Under present law, the beneficiary or estate of a deceased employee generally can exclude up to $5,000 in benefits paid by or on behalf of an employer by reason of the employee's death (sec. 101(b)).

Recovery of basis

Amounts received as an annuity under a qualified plan generally are includible in income in the year received, except to the extent they represent the return of the recipient's investment in the contract (i.e., basis). Under present law, a pro-rata basis recovery rule generally applies, so that the portion of any annuity payment that represents nontaxable return of basis is determined by applying an exclusion ratio equal to the employee's total investment in the contract divided by the total expected payments over the term of the annuity.

Under a simplified alternative method provided by the IRS, the taxable portion of qualifying annuity payments is determined under a simplified exclusion ratio method.

In no event can the total amount excluded from income as nontaxable return of basis be greater than the recipient's total investment in the contract.

Required distributions

Present law provides uniform minimum distribution rules generally applicable to all types of tax-favored retirement vehicles, including qualified plans and annuities, IRAs, and tax-sheltered annuities.

Under present law, a qualified plan is required to provide that the entire interest of each participant will be distributed beginning no later than the participant's required beginning date (sec. 401(a)(9)). The required beginning date is generally April 1 of the calendar year following the calendar year in which the plan participant or IRA owner attains age 70½. In the case of a governmental plan or a church plan, the required beginning date is the later of first, such April 1, or second, the April 1 of the year following the year in which the participant retires.

House bill

Lump-sum distributions

The House bill repeals 5-year averaging for lump-sum distributions from qualified plans. Thus, the bill repeals the separate tax paid on a lump-sum distribution and also repeals the deduction from gross income for taxpayers who elect to pay the separate tax on a lump-sum distribution. The bill preserves the transition rules adopted in the Tax Reform Act of 1986.

Effective date.—Taxable years beginning after December 31, 1995.

$5,000 exclusion for employer-provided death benefits

The House bill repeals the $5,000 exclusion for employer-provided death benefits.

Effective date.—Taxable years beginning after December 31, 1995.

Recovery of basis

The House bill provides that basis recovery on payments from qualified plans generally is determined under a method similar to the present-law simplified alternative method provided by the IRS. The portion of each annuity payment that represents a return of basis is equal to the employee's total basis as of the annuity starting date, divided by the number of anticipated payments under the following table:

Age:	*Number of payments*
Not more than 55	300
56–60	260
61–65	240
66–70	170
More than 70	120

Effective date.—Annuity starting dates after December 31, 1995.

Required distributions

The House bill modifies the rule that requires all participants in qualified plans to commence distributions by age 70½ without regard to whether the participant is still employed by the employer and generally replaces it with the rule in effect prior to the Tax Reform Act of 1986. Under the House bill, distributions generally are required to begin by April 1 of the calendar year following the later of first, the calendar year in which the employee attains age 70½ or second, the calendar year in which the employee retires. However, in the case of a 5-percent owner of the employer, distributions are required to begin no later than the April 1 of the calendar year following the year in which the 5-percent owner attains age 70½.

In addition, in the case of an employee (other than a 5-percent owner) who retires in a calendar year after attaining age 70½, the bill generally requires the employee's accrued benefit to be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits under the plan. Thus, under the House bill, the employee's accrued benefit is required to reflect the value of benefits that the employee would have received if the employee had retired at age 70½ and had begun receiving benefits at that time.

The actuarial adjustment rule and the rule requiring 5-percent owners to begin distributions after attainment of age 70½ do not apply, under the House bill, in the case of a governmental plan or church plan.

Effective date.—Years beginning after December 31, 1995.

Senate amendment

Lump-sum distributions

The Senate amendment is the same as the House bill.

Effective date.—Taxable years beginning after December 31, 1998.

$5,000 exclusion for employer-provided death benefits

The Senate amendment is the same as the House bill.

Recovery of basis

The Senate amendment is the same as the House bill, except that the number of anticipated payments is determined under the following table:

Age:	*Number of payments*
Not more than 55	360
56–60	310
61–65	260
66–70	210
More than 70	160

Effective date.—Same as House bill.

Required distributions

The Senate amendment is the same as the House bill.

Conference agreement

Lump-sum distributions

The conference agreement follows the Senate amendment.

$5,000 exclusion for employer-provided death benefits

The conference agreement follows the House bill and the Senate amendment.

Recovery of basis

The conference agreement follows the Senate amendment.

Required distributions

The conference agreement follows the House bill and the Senate amendment.

B. INCREASED ACCESS TO PENSION PLANS

1. MODIFICATIONS OF SIMPLIFIED EMPLOYEE PENSIONS (SEC. 14211 OF THE HOUSE BILL)

Present law

Certain employers (other than tax-exempt and governmental employers) can establish a simplified employee pension (''SEP'') for the benefit of their employees under which the employees can elect to have contributions made to the SEP or to receive the contributions in cash. The amounts the employee elects to have contributed to the SEP are not currently includible in income.

The election to have amounts contributed to a SEP or received in cash is available only if at least 50 percent of the eligible employees of the employer elect to have amounts contributed to the

SEP. In addition, such election is available for a taxable year only if the employer maintaining the SEP had 25 or fewer eligible employees at all times during the prior taxable year.

Elective deferrals under SEPs are subject to a special nondiscrimination test.

House bill

The House bill modifies the rules relating to salary reduction SEPs by providing that such SEPs may be established by employers with 100 or fewer employees. The House bill repeals the requirement that at least 50 percent of eligible employees actually participate in a salary reduction SEP. The House bill modifies the special nondiscrimination test applicable to elective deferred under SEPs and permits a salary reduction SEP to satisfy the design-based safe harbor available to qualified cash or deferred arrangements (see C.3., below).

Effective date.—Years beginning after December 31, 1995.

Senate amendment

No provision. However, the Senate amendment adopts a new type of retirement plan (called a "SIMPLE" retirement plan) (see the description in II.B., above).

Conference agreement

The conference agreement does not include the House bill provision.

2. STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(K) (SEC. 14212 OF THE HOUSE BILL AND SEC. 12917 OF THE SENATE AMENDMENT)

Present law

Under present law, tax-exempt and State and local government organizations are generally prohibited from establishing qualified cash or deferred arrangements (sec. 401(k) plans). Qualified cash or deferred arrangements (1) of rural cooperatives, (2) adopted by State and local governments before May 6, 1986, or (3) adopted by tax-exempt organizations before July 2, 1986, are not subject to this prohibition.

House bill

The House bill allows tax-exempt organizations and State and local governments and their agencies and instrumentalities to maintain qualified cash or deferred arrangements, unless the entity maintains a section 457 plan.

Tax-exempt and governmental plans eligible to maintain qualified cash or deferred arrangements under present law are not to be subject to the prohibition on maintaining such a plan if the entity maintains a section 457 plan.

Effective date.—Years beginning after December 31, 1996.

Senate amendment

The Senate amendment permits organizations exempt from tax (other than an organization described in sec. 501(c)(3)) to maintain qualified cash or deferred arrangements.

Effective date.—Years beginning after December 31, 1997.

Conference agreement

The conference agreement follows the Senate amendment, except that the provision applies to all tax-exempt organizations (including, for this purpose, Indian tribes). The conference report retains the present-law prohibition in the maintenance of cash or deferred arrangements by State and local governments, (except to the extent it may apply to Indian tribes).

Effective date.—Years beginning after December 31, 1996.

3. TAX CREDIT FOR PENSION PLAN START-UP COSTS OF SMALL EMPLOYERS (SEC. 12916 OF THE SENATE AMENDMENT)

Present law

An employer is generally entitled to deduct ordinary and necessary business expenses, including expenses associated with establishing pension plans.

House bill

No provision.

Senate amendment

In lieu of the present-law deduction, small employers would be entitled to a credit with respect to the expenses of establishing a SIMPLE retirement plan (see the description in II.B., above). The credit equals 50 percent of the start-up costs of establishing the plan up to a maximum credit of $500.

The credit is not available to an employer that made contributions to a qualified plan (or a SIMPLE plan) during the 2 years preceding the year in question. In addition, the credit is not available to employers—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.

Effective date.—Costs incurred after the date of enactment in taxable years ending after that date.

Conference agreement

The conference agreement does not include the Senate amendment.

C. NONDISCRIMINATION PROVISIONS

1. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES AND FAMILY AGGREGATION RULES (SECS. 14221–14222 OF THE HOUSE BILL AND SEC. 12901 OF THE SENATE AMENDMENT)

Present law

Definition of highly compensated employee

An employee, including a self-employed individual, is treated as highly compensated if, at any time during the year or the preceding year, the employee (1) was a 5-percent owner of the employer, (2) received more than $100,000 (for 1995) in annual compensation from the employer, (3) received more than $66,000 (for 1995) in annual compensation from the employer and was one of the top-paid 20 percent of employees during the same year, or (4) was an officer of the employer who received compensation in excess of $60,000 (for 1995). If, for any year, no officer has compensation in excess of the threshold, then the highest paid officer of the employer is treated as a highly compensated employee.

Family aggregation rules

A special rule applies with respect to the treatment of family members of certain highly compensated employees for purposes of the nondiscrimination rules applicable to qualified plans. Under the special rule, if an employee is a family member of either a 5-percent owner or 1 of the top-10 highly compensated employees by compensation, then any compensation paid to such family member and any contribution or benefit under the plan on behalf of such family member is aggregated with the compensation paid and contributions or benefits on behalf of the 5-percent owner or the highly compensated employee in the top-10 employees by the compensation. Therefore, such family member and employee are treated as a single highly compensated employee. An individual is considered a family member if, with respect to an employee, the individual is a spouse, lineal ascendant or descendant, or spouses of a lineal ascendant or descendant of the employee.

Similar family aggregation rules apply with respect to the $150,000 (for 1995) limit on compensation that may be taken into account under a qualified plan (sec. 401(a)(17)) and for deduction purposes (sec. 404(1)). However, under such provisions, only the spouse of the employee and lineal descendants of the employee who have not attained the age 19 are taken into account.

House bill

Definition of highly compensated employee

Under the House bill, an employee is highly compensated if the employee (1) was a 5-percent owner of the employer at any time during the year or the preceding year or (2) had compensation for the preceding year in excess of $80,000 (indexed for inflation). The House bill repeals the rule requiring the highest paid officer to be treated as a highly compensated employee.

Effective date.—Years beginning after December 31, 1995.

Family aggregation rules

The House bill repeals the family aggregation rules.

Effective date.—The provision is effective for years beginning after December 31, 1995.

Senate amendment

Definition of highly compensated employee

Under the Senate amendment, an employee is highly compensated if the employee (1) was a 5-percent owner of the employer at any time during the year or the preceding year, (2) had compensation for the preceding year in excess of $80,000 (indexed for inflation), or (3) was the most highly compensated officer of the employer for the preceding year. The rule providing that the most highly compensated officer is a highly compensated employee does not apply to plans maintained by tax-exempt or State and local governmental organizations for purposes of applying the nondiscrimination tests applicable to cash or deferred arrangements.

Effective date.—Years beginning after December 31, 1996.

Family aggregation rules

The Senate amendment is the same as the House bill.

Conference agreement

Definition of highly compensated employee

The conference agreement follows the House bill, except that an employee with compensation for the preceding year in excess of $80,000 (indexed for inflation) is not considered highly compensated unless the employee was in the top 20 percent of employees by compensation for such year.

Family aggregation rules

The conference agreement follows the House bill and the Senate amendment.

2. MODIFICATION OF ADDITIONAL PARTICIPATION REQUIREMENTS (SEC. 14223 OF THE BILL AND SEC. 12903 OF THE SENATE AMENDMENT)

Present law

Under present law, a plan is not a qualified plan unless it benefits no fewer than the lesser of (a) 50 employees of the employer or (b) 40 percent of all employees of the employer (sec. 401(a)(26)). This requirement may not be satisfied by aggregating comparable plans, but may be applied separately to different lines of business of the employer. A line of business of the employer does not qualify as a separate line of business unless it has at least 50 employees.

House bill

The bill provides that the minimum participation rule applies only to defined benefit pension plans. In addition, the bill provides that a defined benefit pension plan does not satisfy the rule unless it benefits no fewer than the lesser of first, 50 employees or second, the greater of (a) 40 percent of all employees of the employer or (b) 2 employees (1 employee if there is only 1 employee).

The bill provides that the requirement that a line of business has at least 50 employees does not apply in determining whether a plan satisfies the minimum participation rule on a separate line of business basis.

Effective date.—The provision is effective for years beginning after December 31, 1995.

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. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS (SEC. 14224 OF THE HOUSE BILL AND SEC. 12904 OF THE SENATE AMENDMENT)

Present law

Under present law, a special nondiscrimination test applies to qualified cash or deferred arrangements. The special nondiscrimination test is satisfied if the actual deferral percentage (ADP) for eligible highly compensated employees for a plan year is equal to or less than either (1) 125 percent of the ADP of all nonhighly compensated employees eligible to defer under the arrangement or (2) the lesser of 200 percent of the ADP of all eligible nonhighly compensated employees or such ADP plus 2 percentage points.

Employer matching contributions and after-tax employee contributions under qualified defined contribution plans are subject to a special nondiscrimination test similar to the special nondiscrimination test applicable to qualified cash or deferred arrangements.

A plan that would otherwise fail to meet the special nondiscrimination test for qualified cash or deferred arrangements is not treated as failing such test if excess contributions (with allocable income) are distributed to the employee or, in accordance with Treasury regulations, recharacterized as after-tax employee contributions. For purposes of this rule, in determining the amount of excess contributions and the employees to whom they are allocated, the elective deferrals of highly compensated employees are reduced in the order of their actual deferral percentage beginning with those highly compensated employees with the highest actual deferral percentages. A similar rule applies to matching contributions.

House bill

Prior-year data.—The House bill modifies the special nondiscrimination tests applicable to elective deferrals and employer matching and after-tax employee contributions to provide that the maximum permitted actual deferral percentage for highly compensated employees for the year is determined by reference to the actual deferral percentage for nonhighly compensated employees for the preceding, rather than the current, year. A special rule applies for the first plan year.

Safe harbor for cash or deferred arrangements.—The bill provides that a cash or deferred arrangement satisfies the special nondiscrimination tests if the plan satisfies one of two contribution requirements and satisfies a notice requirement.

A plan satisfies the contribution requirements under the safe harbor rule for qualified cash or deferred arrangements if the plan either first, satisfies a matching contribution requirement or second, the employer makes a nonelective contribution to a defined contribution plan of at least 3 percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the arrangement without regard to whether the employee makes elective contributions under the arrangement.

A plan satisfies the matching contribution requirement if, under the arrangement: First, the employer makes a matching contribution on behalf of each nonhighly compensated employee that is equal to (a) 100 percent of the employee's elective contributions up to 3 percent of compensation and (b) 50 percent of the employee's elective contributions from 3 to 5 percent of compensation; and second, the level of match for highly compensated employees is not greater than the match rate for nonhighly compensated employees at any level of compensation.

Alternatively, if the matching contribution requirement is not satisfied at some level of employee compensation, the requirement is deemed to be satisfied if first, the level of employer matching contributions does not increase as employee elective contributions increase and second, the aggregate amount of matching contributions with respect to elective contributions up to that level of compensation at least equals the amount of matching contributions that would be made if matching contributions satisfied the percentage requirements. For example, the alternative test would be satisfied if an employer matches 125 percent of an employee's elective contributions up to the first 3 percent of compensation, 25 percent of elective deferrals from 3 to 4 percent of compensation, and provides no match thereafter. This is because the employer match does not increase and the aggregate amount of matching contributions is at least equal to the matching contributions required under the general safe harbor rule.

Employer matching and nonelective contributions used to satisfy the contribution requirements of the safe harbor rules are required to be nonforfeitable and subject to the restrictions on withdrawals that apply to an employee's elective deferrals under a qualified cash or deferred arrangement (sec. 401(k)(2)(B) and (C)).

The notice requirement is satisfied if each employee eligible to participate in the arrangement is given written notice, within a reasonable period before any year, of the employee's rights and obligations under the arrangement.

Alternative method of satisfying special nondiscrimination test for matching contributions.—The bill provides a safe harbor method of satisfying the special nondiscrimination test applicable to employer matching contributions. Under this safe harbor, a plan is treated as meeting the special nondiscrimination test if first, the plan meets the contribution and notice requirements applicable under the safe harbor method of satisfying the special nondiscrimination requirement for qualified cash or deferred arrangements, and second, the plan satisfies a special limitation on matching contributions. After-tax employee contributions are tested separately under the ACP test.

The limitation on matching contributions is satisfied if first, the matching contributions on behalf of any employee may not be made with respect to employee contributions or elective deferrals in excess of 6 percent of compensation and second, the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase.

Simplified employee pensions.—The bill modifies the present-law nondiscrimination test applicable to salary reduction SEPs to provide that the average of deferral percentages for all nonhighly compensated employees for the preceding, rather than the current, year is to be used. In addition, the bill permits a salary reduction SEP to satisfy the qualified cash or deferred arrangement safe harbor nondiscrimination test.

Distribution of excess contributions.—The House bill provides that the total amount of excess contributions is determined as under present law, but the distribution of excess contributions is required to be made on the basis of the amount of contribution by, or on behalf of, each highly compensated employee. Thus, excess contributions are deemed attributable first to those highly compensated employees who have the greatest dollar amount of elective deferrals.

Effective date.—Years beginning after December 31, 1995.

Senate amendment

Prior-year data.—Same as the House bill, except that an employer is allowed to elect to use current year actual deferral percentages. Such an election can be revoked only as provided by the Secretary.

Safe harbor for cash or deferred arrangements.—Same as House bill.

Alternative method of satisfying special nondiscrimination test for matching contributions.—Same as House bill, except that an employer is allowed to elect to use current year actual deferral percentages. Such an election can be revoked only as provided by the Secretary.

Simplified employee pensions.—No provision. However, the Senate amendment adopts a new type of retirement plan (called a "SIMPLE" retirement plan) (see the description in II.B., above).

Distribution of excess contributions.—No provision.

Effective date.—Years beginning after December 31, 1998.

Conference agreement

The conference agreement follows the Senate amendment, except that it includes the House bill provision providing that allocations of excess contributions are to be made on the basis of the amount of contribution by, or on behalf of, each highly compensated employee.

Effective date.—The safe harbor for cash or deferred arrangements and the alternative method of satisfying the special nondiscrimination test for matching contributions are effective for plan years beginning after December 31, 1998. The provision relating to the distribution of excess contributions is effective for plan years beginning after December 31, 1995.

4. DEFINITION OF COMPENSATION FOR PURPOSES OF THE LIMITS ON CONTRIBUTIONS AND BENEFITS (SEC. 12902 OF THE SENATE AMENDMENT)

Present law

Present law imposes limits on contributions and benefits under qualified plans based on the type of plan. For purposes of these limits, present law provides that the definition of compensation generally does not include elective employee contributions to certain employee benefit plans.

House bill

No provision.

Senate amendment

The Senate amendment provides that elective deferrals to section 401(k) plans and similar arrangements, elective contributions to nonqualified deferred compensation plans of tax-exempt employers and State and local governments (sec. 457 plans), and salary reduction contributions to a cafeteria plan are considered compensation for purposes of the limits on contributions and benefits.

Effective date.—Years beginning after December 31, 1997.

Conference agreement

The conference agreement follows the Senate amendment.

D. MISCELLANEOUS PENSION SIMPLIFICATION

1. TREATMENT OF LEASED EMPLOYEES (SEC. 14231 OF THE HOUSE BILL AND SEC. 12931 OF THE SENATE AMENDMENT)

Present law

An individual (a leased employee) who performs services for another person (the recipient) may be required to be treated as the recipient's employee for various employee benefit provisions, if the services are performed pursuant to an agreement between the recipient and any other person (the leasing organization) who is otherwise treated as the individual's employer (sec. 414(n)). The individual is to be treated as the recipient's employee only if the individual has performed services for the recipient on a substantially full-time basis for a year, and the services are of a type historically performed by employees in the recipient's business field.

An individual who otherwise would be treated as a recipient's leased employee will not be treated as such an employee if the individual participates in a safe harbor plan maintained by the leasing organization meeting certain requirements. Each leased employee is to be treated as an employee of the recipient, regardless of the existence of a safe harbor plan, if more than 20 percent of an employer's nonhighly compensated workforce are leased.

House bill

Under the House bill, the present-law "historically performed" test is replaced with a new rule under which an individual is not considered a leased employee unless the services are performed under significant direction or control by the recipient.

Effective date.—The provision is effective for years beginning after December 31, 1995, except that the changes do not apply to relationships that have been previously determined by an IRS ruling not to involve leased employees. In applying the leased employee rules to years beginning before the effective date, it is intended that the Secretary use a reasonable interpretation of the statute to apply the leasing rules to prevent abuse.

Senate amendment

Under the Senate amendment, the present-law "historically performed" test is replaced with a new rule under which an individual is not considered a leased employee unless the individual's services are performed under the primary direction or control of the service recipient.

Effective date.—Same as House bill.

Conference agreement

The conference agreement follows the Senate amendment. Consequently, an individual is not considered a leased employee unless the individual's services are performed under primary direction or control by the service recipient. As under present law, the determination of whether someone is a leased employee is made after determining whether the individual is a common-law employee of the recipient. Thus, an individual who is not a common-law employee of the service recipient could nevertheless be a leased employee of the service recipient. Similarly, the fact that a person is or is not found to perform services under primary direction or control of the recipient for purposes of the employee leasing rules is not determinative of whether the person is or is not a common-law employee of the recipient.

Whether services are performed by an individual under primary direction or control by the service recipient depends on the facts and circumstances. In general, primary direction and control means that the service recipient exercises the majority of direction and control over the individual. Factors that are relevant in determining whether primary direction or control exists include whether the individual is required to comply with instructions of the service recipient about when, where, and how he or she is to perform the services, whether the services must be performed by a particular person, whether the individual is subject to the supervision of the service recipient, and whether the individual must perform services in the order or sequence set by the service recipient. Factors that generally are not relevant in determining whether such direction or control exists include whether the service recipient has the right to hire or fire the individual and whether the individual works for others.

For example, an individual who works under the direct supervision of the service recipient would be considered to be subject to primary direction or control of the service recipient even if another company hired and trained the individual, had the ultimate (but unexercised) legal right to control the individual, paid his wages, withheld his employment and income taxes, and had the exclusive right to fire him. Thus, for example, temporary secretaries, receptionists, word processing personnel and similar office personnel who are subject to the day-to-day control of the employer in essentially the same manner as a common-law employee are treated as leased employees if the period of service threshold is reached.

On the other hand, an individual who is a common-law employee of Company A who performs services for Company B on the business premises of Company B under the supervision of Company A would generally not be considered to be under primary direction or control of Company B. The supervision by Company A must be more than nominal, however, and not merely a mechanism to avoid the literal language of the direction or control test.

An example of the situation in the preceding paragraph might be a work crew that comes into a factory to install, repair, maintain, or modify equipment or machinery at the factory. The work crew includes a supervisor who is an employee of the equipment (or equipment repair) company and who has the authority to direct and control the crew, and who actually does exercise such direction and control. In this situation, the supervisor and his or her crew are required to comply with the safety and environmental precautions of the manufacturer. As another example, certain professionals (e.g., attorneys, accountants, actuaries, doctors, computer programmers, systems analysts, and engineers) who regularly make use of their own judgement and discretion on matters of importance in the performance of their services and are guided by professional or industry standards, are not leased employees merely because the service recipient requires the services to be performed on site and according to certain stages and timetables.

Under the direction or control test, clerical and similar support staff (e.g., secretaries and nurses in a doctor's office) generally would be considered to be subject to primary direction or control of the service recipient and would be leased employees provided the other requirements of section 414(n) are met. On the other hand, outside professionals who maintain their own businesses (e.g., lawyers and accountants) generally would not be considered to be subject to such primary direction or control.

In many cases, the "historically performed" test is overly broad, and results in the unintended treatment of individuals as leased employees. One of the principal purposes for changing the leased employee rules is to relieve the unnecessary hardship and uncertainty created for employers in these circumstances. However, it is not intended that the direction or control test enable employers to engage in abusive practices. Thus, it is intended that the Secretary interpret and apply the leased employee rules in a manner so as to prevent abuses. This ability to prevent abuses under the leasing rules is in addition to the present-law authority of the Secretary under section 414(o). For example, one potentially abusive situation exists where the benefit arrangements of the service recipient overwhelmingly favor its highly compensated employees, the employer has no or very few nonhighly compensated common-law employees, yet the employer makes substantial use of the services of nonhighly compensated individuals who are not its common-law employees.

The conferees do not intend this provision to have any impact whatsoever on the interpretation or applicability of Federal, State, or local labor laws.

2. PLANS COVERING SELF-EMPLOYED INDIVIDUALS (SEC. 14232 OF THE HOUSE BILL AND SEC. 12932 OF THE SENATE AMENDMENT)

Present law

Prior to the Tax Equity and Fiscal Responsibility Act of 1982 (''TEFRA''), different rules applied to retirement plans maintained by incorporated employers and unincorporated employers (such as partnerships and sole proprietors). In general, plans maintained by unincorporated employers were subject to special rules in addition to the other qualification requirements of the Code. Most, but not all, of this disparity was eliminated by TEFRA. Under present law, certain special aggregation rules apply to plans maintained by owner employees of unincorporated businesses that do not apply to other qualified plans (sec. 401(d)(1) and (2)).

House bill

The bill eliminates the special aggregation rules that apply to plans maintained by self-employed individuals that do not apply to other qualified plans.

Effective date.—The provision is effective for years beginning after December 31, 1995.

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. ELIMINATION OF SPECIAL VESTING RULE FOR MULTIEMPLOYER PLANS (SEC. 14233 OF THE HOUSE BILL AND SEC. 12933 OF THE SENATE AMENDMENT)

Present law

Under present law, except in the case of multiemployer plans, a plan is not a qualified plan unless a participant's employer-provided benefit vests at least as rapidly as under one of two alternative minimum vesting schedules. A plan satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the participant's completion of 5 years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent at the end of 4 years of service, 60 percent at the end of 5 years of service, 80 percent at the end of 6 years of service, and 100 percent at the end of 7 years of service.

In the case of a multiemployer plan, a participant's accrued benefit derived from employer contributions is required to be 100-

percent vested no later than upon the participant's completion of 10 years of service. This special rule applies only to employees covered by the plan pursuant to a collective bargaining agreement.

House bill

The bill conforms the vesting rules for multiemployer plans to the rules applicable to other qualified plans.

Effective date.—The provision is effective for plan years beginning on or after the earlier of (1) the later of January 1, 1996, or the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates, or (2) January 1, 1998, with respect to participants with an hour of service after the effective date.

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.

4. DISTRIBUTIONS UNDER RURAL COOPERATIVE PLANS (SEC. 14232 OF THE HOUSE BILL AND SEC. 12938 OF THE SENATE AMENDMENT)

Present law

A qualified cash or deferred arrangement can permit withdrawals of employee elective deferrals only after the earlier of (1) the participant's separation from service, death, or disability, (2) termination of the arrangement, or (3) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½ or the occurrence of a hardship of the participant. In the case of a money purchase pension plan, including a rural cooperative plan, withdrawals by participants cannot occur upon attainment of age 59½ or upon hardship.

House bill

The House bill provides that a rural cooperative plan that includes a cash or deferred arrangement may permit distributions to plan participants after the attainment of age 59½.

Effective date.—Distributions after December 31, 1995.

Senate amendment

Same as House bill, except that withdrawals are also permitted on account of hardship. In addition, the definition of a rural cooperative is expanded to include certain public utility districts, a national association of rural cooperatives, and any other organization providing services related to the activities of rural cooperatives, but only in the case of a plan with respect to which substantially all of the organizations maintaining are rural cooperatives.

Effective date.—Distributions after the date of enactment. The modifications to the definition of a rural cooperative applies to plan years beginning after December 31, 1994.

Conference agreement

The conference agreement follows the Senate amendment, except that the definition of rural cooperative does not include any other organization providing services related to the activities of rural cooperatives.[96]

5. TREATMENT OF GOVERNMENTAL PLANS UNDER SECTION 415 (SEC. 14235 OF THE HOUSE BILL AND SEC. 12935 OF THE SENATE AMENDMENT)

Present law

Present law imposes limits on contributions and benefits under qualified plans based on the type of plan (sec. 415). Certain special rules apply to State and local governmental plans under which such plans may provide benefits greater than those permitted by the limits on benefits applicable to plans maintained by private employers.

In the case of defined benefit pension plans, the limit on the annual retirement benefit is the lesser of (1) 100 percent of compensation or (2) $120,000 (indexed for inflation). The dollar limit is reduced in the case of early retirement or if the employee has less than 10 years of plan participation.

House bill

The House bill makes the following modifications to the limits on contributions and benefits as applied to governmental plans:

(1) compensation includes employer contributions to certain plans under a salary reduction arrangement;

(2) the 100 percent of compensation limitation on defined benefit pension plan benefits does not apply; and

(3) the early retirement reduction and the 10-year phase in of the defined benefit plan dollar limit do not apply to certain disability and survivor benefits.

The House bill also permits State and local government employers to maintain excess benefit plans without regard to the limits on unfunded deferred compensation arrangements of State and local government employers (sec. 457).

Effective date.—Years beginning on or after January 1, 1996. Governmental plans are treated as if in compliance with the requirements of section 415 for years beginning before January 1, 1996.

Senate amendment

The Senate amendment is the same as the House bill, except that the exemption from the 100 percent of compensation limit does not apply to State legislators. The modification of the definition of compensation to include contributions under a salary reduction agreement is contained in another provision (see C.4., above) and applies to all employers.

[96] Of course, such organizations may be eligible to maintain a qualified cash or deferred arrangement under the provision of the conference agreement allowing tax-exempt employers to maintain cash or deferred arrangements.

Effective date.—Years beginning on or after January 1, 1995. With respect to governmental plans, no inference is intended with respect to prior years.

Conference agreement

The conference agreement follows the House bill, except the provision is effective for years beginning after December 31, 1994. The provision should not be construed to infer that a governmental plan fails to satisfy the requirements of section 415 with respect to years beginning before January 1, 1995. With respect to years before the effective date of this provision, the Secretary is directed to enforce the requirements of section 415 consistent with the amendments in this provision.

6. UNIFORM RETIREMENT AGE (SEC. 14236 OF THE BILL AND SEC. 12940 OF THE SENATE AMENDMENT)

Present law

A qualified plan generally must provide that payment of benefits under the plan must begin no later than 60 days after the end of the plan year in which the participant reaches age 65. Also, for purpose of the vesting and benefit accrual rules, normal retirement age generally can be no later than age 65. For purposes of applying the limits on contributions and benefits (sec. 415), Social Security retirement age is generally used as retirement age. The Social Security retirement age as used for such purposes is presently age 65, but is scheduled to gradually increase.

House bill

The bill provides that for purposes of the general nondiscrimination rule (sec. 401(a)(4)) the Social Security retirement age (as defined in sec. 415) is a uniform retirement age and that subsidized early retirement benefits and joint and survivor annuities are not treated as not being available to employees on the same terms merely because they are based on an employee's Social Security retirement age (as defined in sec. 415).

Effective date.—The provision is effective for years beginning after December 31, 1995.

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.

7. UNIFORM PENALTY PROVISIONS TO APPLY TO CERTAIN PENSION REPORTING REQUIREMENTS (SEC. 14237 OF THE HOUSE BILL)

Present law

Any person who fails to file an information report with the IRS on or before the prescribed filing date is subject to penalties for each failure. A different, flat-amount penalty applies for each failure to provide information reports to the IRS or statements to payees relating to pension payments.

House bill

The House bill incorporates into the general penalty structure the penalties for failure to provide information reports relating to pension payments to the IRS and to recipients.

Effective date.—Returns and statements the due date for which is after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

8. CONTRIBUTIONS ON BEHALF OF DISABLED EMPLOYEES (SEC. 14238 OF THE HOUSE BILL AND SEC. 12937 OF THE SENATE AMENDMENT)

Present law

Under present law, an employer may elect to continue deductible contributions to a defined contribution plan on behalf of an employee who is permanently and totally disabled. For purposes of the limit on annual additions (sec. 415(c)), the compensation of a disabled employee is deemed to be equal to the annualized compensation of the employee prior to the employee's becoming disabled. Contributions are not permitted on behalf of disabled employees who were officers, owners, or highly compensated before they became disabled.

House bill

The bill provides that the special rule for contributions on behalf of disabled employees is applicable without an employer election and to highly compensated employees if the defined contribution plan provides for the continuation of contributions on behalf of all participants who are permanently and totally disabled.

Effective date.—The provision applies to years beginning after December 31, 1995.

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.

9. TREATMENT OF DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS (SEC. 14239 OF THE HOUSE BILL AND SEC. 12936 OF THE SENATE AMENDMENT)

Present law

Under a section 457 plan, an employee who elects to defer the receipt of current compensation is taxed on the amounts deferred when such amounts are paid or made available. The maximum annual deferral under such a plan is the lesser of (1) $7,500 or (2) 33⅓ percent of compensation (net of the deferral).

Amounts deferred under a section 457 plan may not be made available to an employee before the earlier of (1) the calendar year in which the participant attains age 70½, (2) when the participant is separated from the service with the employer, or (3) when the participant is faced with an unforeseeable emergency.

Benefits under a section 457 plan are not treated as made available if the participant may elect to receive a lump sum payable after separation from service and within 60 days of the election. This exception is available only if the total amount payable to the participant under the plan does not exceed $3,500 and no additional amounts may be deferred under the plan with respect to the participant.

House bill

The House bill makes three changes to the rules governing section 457 plans.

(1) The bill permits in-service distributions of accounts that do not exceed $3,500 under certain circumstances.

(2) The bill increases the number of elections that can be made with respect to the time distributions must begin under the plan.

(3) The bill provides for indexing of the dollar limit on deferrals. No rounding rules apply to such indexing.

Effective date.—Taxable years beginning after December 31, 1995.

Senate amendment

Same as the House bill, except that a rounding rule applies to the indexing of the dollar limits on deferrals.

Effective date.—Same as House bill.

Conference agreement

Same as the Senate amendment, except when indexing the dollar limit on deferrals, the limit is rounded to the next lowest multiple of $500.

10. TRUST REQUIREMENT FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS (SEC. 14240 OF THE HOUSE BILL)

Present law

Until deferrals under a section 457 plan are made available to a plan participant, such amounts deferred, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights must remain solely the property and rights of the employer, subject only to the claims of the employer's general creditors.

House bill

Under the House bill, all amounts deferred under a section 457 plan maintained by a State and local governmental employer are to be held in trust (or custodial account or annuity contract) for the exclusive benefit of employees. The trust (or custodial account or annuity contract) is provided tax-exempt status. Amounts are not considered made available merely because they are held in a trust, custodial account, or annuity contract.

Effective date.—Generally effective with respect to plan assets held on or after the date of enactment. In the case of assets held within the 90-day period after the date of enactment, the provision does not apply until such 90th day.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective date.—Generally effective with respect to amounts held on or after the date of enactment. In the case of amounts deferred before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature beginning after the date of enactment, a trust need not be established by reason of this provision before such first day. In the case of a State that has a 2-year legislative session, each year of such session is deemed to be a separate regular session of the State legislature.

11. CORRECTION OF GATT INTEREST AND MORTALITY RATE PROVISIONS IN THE RETIREMENT PROTECTION ACT (SEC. 14241 OF THE HOUSE BILL)

Present law

The Retirement Protection Act of 1994, enacted as part of the implementing legislation for the General Agreement on Tariffs and Trade (GATT), modified the actuarial assumptions that must be used in adjusting benefits and limitations. In general, in adjusting a benefit that is payable in a form other than a straight life annuity and in adjusting the dollar limitation if benefits begin before Social Security retirement age, the interest rate to be used cannot be less than the greater of 5 percent or the rate specified in the plan. Under the Retirement Protection Act, if the benefit is payable in a form subject to the requirements of section 417(e)(3), then the interest rate on 30-year Treasury securities is substituted for 5 percent. Also under the Retirement Protection Act, for purposes of adjusting any limit or benefit, the mortality table prescribed by the Secretary must be used.

This provision of the Retirement Protection Act is generally effective as of the first day of the first limitation year beginning in 1995.

The Retirement Protection Act made similar changes to the interest rate and mortality assumptions used to calculate the value of lump-sum distributions for purposes of the rule permitting involuntary dispositions of certain accrued benefits. In the case of a plan adopted and in effect before December 8, 1995, those provisions do not apply before the earlier of (1) the date a plan amendment applying the new assumption is adopted or made effective (whichever is later), or (2) the first day of the first plan years beginning after December 31, 1999.

House bill

The House bill conforms the effective date of the new interest rate and mortality assumptions that must be used under section

415 to calculate the limits on benefits and contributions to the effective date of the provision relating to the calculation of lump-sum distributions. This rule applies only in the case of plans that were adopted and in effect before the date of enactment of the Retirement Protection Act (December 8, 1994).

To the extent plans have already been amended to reflect the new assumptions, plan sponsors are permitted within 1 year of the date of enactment to amend the plan to reverse retroactively such amendment.

Effective date.—Effective as if included in the Retirement Protection Act.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except the provision repeals the Retirement Protection Act provision which requires that if the benefit is payable in a form subject to the requirements of section 417(e)(3) (e.g., lump sum), then the interest rate to be used to reduce the dollar limit on benefits under section 415 cannot be less than the greater of the rate on 30-year Treasury securities or the rate specified in the plan. Consequently, regardless of the form of benefit, the interest rate to be used cannot be less than the greater of 5 percent or the rate specified in the plan.

Effective date.—Same as the House bill.

12. MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED UNDER SECTION 403(B) (SEC. 14242 OF THE BILL AND SEC. 12941 OF THE SENATE AMENDMENT)

Present law

Under Treasury regulations, a participant in a tax-sheltered annuity plan (sec. 403(b)) is not permitted to enter into more than one salary reduction agreement in any taxable year. These regulations further provide that a salary reduction agreement is effective only with respect to amounts "earned" after the agreement becomes effective, and that a salary reduction agreement must be irrevocable with respect to amounts earned while the agreement is in effect.

These restrictions do not apply to other elective deferral arrangements such as a qualified cash or deferred arrangement (sec. 401(k)). Under Treasury regulations, participants in a qualified cash or deferred arrangement may enter into more than one salary reduction agreement in a taxable year, such an agreement is effective with respect to compensation currently available to the participant after the agreement becomes effective even though previously "earned," and the agreement may be revoked by the participant.

House bill

The bill provides that for participants in a tax-sheltered annuity plan, the frequency that a salary reduction agreement may be entered into, the compensation to which such agreement applies, and the ability to revoke such agreement shall be determined under the rules applicable to qualified cash or deferred arrangements.

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

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.

13. WAIVER OF MINIMUM WAITING PERIOD FOR QUALIFIED PLAN DISTRIBUTIONS (SEC. 14243 OF THE HOUSE BILL)

Present law

Under present law, in the case of a qualified joint and survivor annuity, a written explanation of the form of benefit must generally be provided to participants no less than 30 days and no more than 90 days before the annuity starting day. Even if a participant has elected to waive the qualified joint and survivor annuity and the spouse has consented to the distribution, the distribution from the plan cannot be made until 30 days after the written explanation was provided to the participant.[97]

House bill

The House bill provides that the minimum period between the date the explanation of the qualified joint and survivor annuity is provided and the annuity starting date does not apply if it is waived by the participant and, if applicable, the participant's spouse. For example, if the participant has not elected to waive the qualified joint and survivor annuity, only the participant need waive the minimum waiting period.

Effective date.—The provision is effective with respect to plan years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

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[97] On September 15, 1995, Treasury issued temporary regulations (T.D. 8620) which provide that a plan may permit a participant to elect (with any applicable spousal consent) a distribution with an annuity starting date before 30 days have elapsed since the explanation was provided, as long as the distribution commences more than seven days after the explanation was provided. Consequently, even if the participant (and spouse, if applicable) has elected to waive the minimum waiting period for receiving a qualified plan distribution, the distribution from the plan cannot be made until seven days have elapsed since the explanation was provided to the participant.

14. REPEAL OF COMBINED PLAN LIMIT (SEC. 14244 OF THE HOUSE BILL AND SEC. 12921 OF THE SENATE AMENDMENT)

Present law

Present law provides limits on contributions and benefits under qualified plans based on the type of plan, i.e., based on whether the plan is a defined contribution plan or a defined benefit pension plan.

Combined plan limit.—An overall limit applies if an individual is a participant in both a defined benefit pension plan and a defined contribution plan (the combined plan limit).

Excess distribution tax.—Present law imposes a 15-percent excise tax on excess distributions from qualified retirement plans, tax-sheltered annuities, and IRAs. Excess distributions are generally the aggregate amount of retirement distributions from such plans during any calendar year in excess of $150,000 (or $750,000 in the case of a lump-sum distribution). An additional 15-percent estate tax is also imposed on an individual's excess retirement accumulation.

House bill

Combined plan limit.—The House bill repeals the combined plan limit.

Effective date.—Limitation years beginning after December 31, 1996.

Excess distribution tax.—No provision.

Senate amendment

Combined plan limit.—Same as House bill, except that the repeal of the combined plan limit would not apply with respect to plans maintained by professional service employers (an employer substantially all of the activities of which are in the fields of architecture, science, health, law, performing arts, financial services, actuarial services, engineering, accounting, and consulting).

Effective date.—Limitation years beginning after December 31, 1998.

Excess distribution tax.—Until the repeal of the combined plan limit is effective, the Senate amendment suspends the excise tax on excess distributions. The additional estate tax on excess accumulations continues to apply.

Effective date.—Distributions in 1996, 1997, and 1998.

Conference agreement

Combined plan limit.—The conference agreement follows the House bill, effective with respect to limitation years beginning after December 31, 1998.

Excess distribution tax.—The conference agreement follows the Senate amendment.

15. DATE FOR ADOPTION OF PLAN AMENDMENTS (SEC. 14245 OF THE HOUSE BILL AND SEC. 12914 OF THE SENATE AMENDMENT)

Present law

Plan amendments to reflect amendments to the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs.

House bill

The House bill generally provides that any plan amendments required by the bill are not required to be made before the first plan year beginning on or after January 1, 1997.

Effective date.—Date of enactment.

Senate amendment

Same as the House bill, except that the date for plan amendments is extended to the first plan year beginning on or after January 1, 1999, in the case of a governmental plan.

Effective date.—Same as House bill.

Conference agreement

The conference agreement does not include the House bill or the Senate amendment.

16. FULL FUNDING LIMITATION OF MULTIEMPLOYER PLANS (SEC. 12934 OF THE SENATE AMENDMENT)

Present law

An employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the lesser of (1) the accrued liability under the plan or (2) 150 percent of the plan's current liability. Valuation of defined benefit pension plans are required annually.

House bill

No provision.

Senate amendment

The Senate amendment provides that the 150 percent of current liability limitation does not apply to multiemployer plans. In addition, the amendment repeals the annual valuation requirement for multiemployer plans and applies the prior-law rule that valuations generally be performed at least every 3 years.

Effective date.—Years beginning after December 31, 1997.

Conference agreement

The conference agreement does not include the Senate amendment.

17. LIMITS ON CONTRIBUTIONS AND BENEFITS UNDER MULTIEMPLOYER PLANS (SEC. 12935 OF THE SENATE AMENDMENT)

Present law

Present law imposes limits on contributions and benefits under qualified plans based on the type of plan (sec. 415). In the case of a defined benefit pension plan, the limit on the annual retirement benefit is the lesser of (1) 100 percent of compensation or (2) $120,000 (indexed for inflation). The dollar limit is reduced in the case of early retirement or if the employee has less than 10 years of plan participation.

House bill

No provision.

Senate amendment

Under the Senate amendment, in the case of a multiemployer plan, the 100 percent of compensation limit, the early retirement reduction, and the 10-year phase in of the defined benefit plan dollar limit do not apply.

Effective date.—Years beginning after December 31, 1995.

Conference agreement

The conference agreement does not include the Senate amendment.

18. TENURED FACULTY (SEC. 12939 OF THE SENATE AMENDMENT)

Present law

Under a section 457 plan, an employee who elects to defer the receipt of current compensation is taxed on the amounts deferred when such amounts are paid or made available. The maximum annual deferral under such a plan is the lesser of (1) $7,500 or (2) 33½ percent of compensation (net of the deferral).

House bill

No provision.

Senate amendment

The Senate amendment provides that the limits of section 457 do not apply to eligible faculty voluntary retirement incentive pay. In order to qualify for the exception, the payments must be made to employees who elect, during a specified period of time of limited duration (as established by the employer) to retire early, the total amount of the payments cannot exceed twice the individual's annual compensation and all such payments to the employee must be completed within 5 years after the employee's termination of employment.

Effective date.—Years beginning after December 31, 1995.

Conference agreement

The conference agreement does not include the Senate amendment.

19. APPLICATION OF ELECTIVE DEFERRAL LIMIT TO SECTION 403(B) PLANS (SEC. 12941 OF THE SENATE AMENDMENT)

Present law

A tax-sheltered annuity plan must provide that elective deferrals made under the plan on behalf of an employee may not exceed the annual limit on elective deferrals ($9,500 for 1995). Plans that do not comply with this requirement may lose their tax-favored status.

House bill

No provision.

Senate amendment

The Senate amendment eliminates the requirement that a tax-sheltered annuity plan must provide that elective deferrals under the plan may not exceed the annual limit on elective deferrals. As under present law, employees who make elective deferrals in excess of the annual limit must include such amounts in their taxable income.

Effective date.—The provision is effective with respect to plan years beginning after December 31, 1995.

Conference agreement

Under the conference agreement, each tax-sheltered annuity contract, not the tax-sheltered annuity plan, must provide that elective deferrals made under the contract may not exceed the annual limit on elective deferrals. It is intended that the contract terms be given effect in order for this requirement to be satisfied. Thus, for example, if the annuity contract issuer takes no steps to ensure that deferrals under the contract do not exceed the applicable limit, then the contract will not be treated as satisfying section 403(b). The provision is intended to make clear that the exclusion of elective deferrals from gross income by employees who have not exceeded the annual limit on elective deferrals will not be affected to the extent other employees exceed the annual limit. However, if the occurrence of an uncorrected elective deferral made by an employee is attributable to reasonable error, the contract does not fail to satisfy section 403(b), and only the portion of the elective deferral in excess of the annual limit is includible in gross income.

Effective date.—Years beginning after December 31, 1995.

20. TREATMENT OF INDIAN TRIBAL GOVERNMENTS UNDER SECTION 403(B) (SEC. 12941 OF THE SENATE AMENDMENT)

Present law

Under present law, certain tax-exempt employers and certain State and local government educational organizations are permitted to maintain tax-sheltered annuity plans (sec. 403(b)). Indian tribal governments are treated as States for this purpose, so certain educational organizations associated with a tribal government are eligible to maintain tax-sheltered annuity plans.

House bill

No provision.

Senate amendment

The Senate amendment provides that any 403(b) annuity contract purchased in a plan year beginning before January 1, 1995.

Effective date.—Date of enactment.

Conference agreement

The conference agreement follows the Senate amendment and also provides that such contracts may be rolled over into a section 401(k) plan maintained by the Indian tribal government pursuant to the conference agreement.

21. TAX ON PROHIBITED TRANSACTIONS (SEC. 12942 OF THE SENATE AMENDMENT)

Present law

Present law prohibits certain transactions (prohibited transactions) between a qualified pension plan and a disqualified person in order to prevent persons with a close relationship to the qualified plan from using that relationship to the detriment of plan participants and beneficiaries. A two-tier excise tax is imposed on prohibited transactions. The initial level tax is equal to 5 percent of the amount involved with respect to the transaction. If the transaction is not corrected within a certain period, a tax equal to 100 percent of the amount involved may be imposed.

House bill

No provision.

Senate amendment

The Senate amendment increases the initial-level prohibited transaction tax from 5 percent to 10 percent.

Effective date.—Transactions occurring after December 31, 1995.

Conference agreement

The conference agreement follows the Senate amendment.

E. SPECIAL RULES FOR CHURCH PENSION PLANS (SECS. 12951–12968 OF THE SENATE AMENDMENT)

Present law

In general, a church plan is a pension plan established and maintained for employees (or their beneficiaries) by a church or a church convention or association of churches that is exempt from tax (sec. 414(e)). Church plans include plans maintained by an organization, whether a corporation or otherwise, that has as its principal purpose or function the administration or funding of a plan or program for providing retirement or welfare benefits for the employees of the church or convention or association of churches. For most purposes, employees of a church include any minister, regardless of the source of his or her compensation, and an employee of an organization which is exempt from tax and which is controlled by or associated with a church or a convention or association of churches.

Plans maintained by churches and certain church-controlled organizations are exempt from certain of the requirements applicable to pension plans under the code pursuant to the Employee Retirement Income Security Act of 1974 (as amended) (''ERISA''). For example, such plans are not subject to ERISA's vesting, coverage, and funding requirements. In some cases, such plans are subject to provisions in effect before the enactment of ERISA. Church plans may elect to waive the exemption from the qualification rules (sec. 410(d)). Electing plans become subject to all the tax code (sec. 401(a)) qualification requirements. Title I of ERISA, the excise tax on prohibited transactions, and participation in the pension plan termination insurance program administered by the Pension Benefit Guaranty Corporation.

Certain eligible employers may maintain tax-sheltered annuity plans (sec. 403(b)). These plans provide tax-deferred retirement savings for employees of public education institutions and employees of certain tax-exempt organizations (including churches and certain organizations associated with churches). In addition to tax-sheltered annuities, alternative funding mechanisms that provide similar tax benefits include church-maintained retirement income accounts (sec. 403(b)(9)).

House bill

No provision.

Senate amendment

In general, the Senate amendment revises the rules relating to church-maintained qualified retirement plans. In addition, the Senate amendment modifies the rules relating to employee annuity contracts and retirement income accounts maintained for the benefit of church employees. The Senate amendment also provides that all retirement benefits of ministers are not subject to self-employment taxes.

No inference is intended with respect to the application of the present-law rules to church-maintained qualified retirement plans.

Effective date.—The provisions of the Senate amendment providing special rules for church plans are generally effective for years beginning after December 31, 1994.

Conference agreement

The conference agreement does not include the Senate amendment.

XIII. PARTNERSHIP SIMPLIFICATION PROVISIONS

A. GENERAL PROVISIONS

1. SIMPLIFIED FLOW-THROUGH FOR LARGE PARTNERSHIPS (SEC. 14301 OF THE HOUSE BILL)

Present law

A partnership generally is treated as a conduit for Federal income tax purposes. Each partner takes into account separately his distributive share of the partnership's items of income, gain, loss, deduction or credit. The character of an item is the same as if it had been directly realized or incurred by the partner. Limitations affecting the computation of taxable income generally apply at the partner level.

The taxable income of a partnership is computed in the same manner as that of an individual, except that no deduction is permitted for personal exemptions, foreign taxes, charitable contributions, net operating losses, certain itemized deductions, or depletion. Elections affecting the computation of taxable income derived from a partnership are made by the partnership, except for certain elections such as those relating to discharge of indebtedness income and the foreign tax credit.

Taxpayers involved in the search for and extraction of crude oil and natural gas are subject to certain special tax rules. As a result, in the case of partnerships engaged in such activities, certain specific information is separately reported to partners.

House bill

The House bill modifies the tax treatment of a large partnership (generally, a partnership with at least 250 partners, or an electing partnership with at least 100 partners) and its partners. The provision provides that each partner takes into account separately the partner's distributive share of the following items, which are determined at the partnership level: (1) taxable income or loss from passive loss limitation activities; (2) taxable income or loss from other activities (e.g., portfolio income or loss); (3) net capital gain or loss to the extent allocable to passive loss limitation activities and other activities; (4) tax-exempt interest; (5) net alternative minimum tax adjustment separately computed for passive loss limitation activities and other activities; (6) general credits; (7) low-income housing credit; (8) rehabilitation credit; (9) credit for producing fuel from a nonconventional source; (10) creditable foreign taxes and foreign source items; and (11) any other items to the extent that the Secretary determines that separate treatment of such items is appropriate.[98] Separate treatment may be appropriate, for example, should changes in the law necessitate such treatment for any items.

Under the House bill, the taxable income of a large partnership is computed in the same manner as that of an individual, ex-

[98] In determining the amounts required to be separately taken into account by a partner, those provisions of the large partnership rules governing computations of taxable income would be applied separately with respect to that partner by taking into account that partner's distributive share of the partnership's items of income, gain, loss, deduction or credit. This rule permits partnerships to make otherwise valid special allocations of partnership items to partners.

cept that the items described above are separately stated and certain modifications are made. These modifications include disallowing the deduction for personal exemptions, the net operating loss deduction and certain itemized deductions.[99] All limitations and other provisions affecting the computation of taxable income or any credit (except for the at risk, passive loss and itemized deduction limitations, and any other provision specified in regulations) are applied at the partnership (and not the partner) level.

All elections affecting the computation of taxable income or any credit generally are made by the partnership.

A "large partnership" is any partnership with at least 250 partners in any preceding taxable year beginning after December 31, 1995.[100] Any partnership treated as a large partnership for a taxable year is so treated for all succeeding years, even if the number of partners falls below 250. Regulations may provide, however, that if the number of partners in any taxable year falls below 100, the partnership is not treated as a large partnership. Partnerships with at least 100 partners can elect to be treated as large partnerships. The election applies to the year for which made and all subsequent years and cannot be revoked without the Secretary's consent.

Service partnerships.—A large partnership does not include any partnership if substantially all the partners are: (1) individuals performing substantial services in connection with the partnership's activities, or personal service corporations the owner-employees of which perform such services; (2) retired partners who had performed such services; or (3) spouses of partners who had performed such services. In addition, the term "partner" does not include any individual performing substantial services in connection with the partnership's activities and holding a partnership interest, or an individual who formerly performed such services and who held a partnership interest at the time the individual performed such services.

Commodity partnerships.—The large partnership rules do not apply to any partnership the principal activity of which is the buying and selling of commodities (not described in sec. 1221(l)), or options, futures or forwards with respect to commodities.

Partnerships holding oil and gas properties.—In general, a large partnership that otherwise meets the qualifications for simplified reporting is not required to report information to its partners under the rules of that regime if it is substantially engaged in oil and gas related activities. Rather, such a partnership continues to report information to its partners as under present law. The bill permits such a partnership, however, to elect to utilize the simplified reporting regime, as modified for oil and gas purposes. If an election is made for any taxable year, it will also apply for all sub-

[99] A large partnership would be allowed a deduction under section 212 for expenses incurred for the production of income, subject to 70-percent disallowance. No income from a large partnership would be treated as fishing or farming income.

[100] The number of partners is determined by counting only persons directly holding partnership interests in the taxable year, including persons holding through nominees; persons holding indirectly (e.g., through another partnership) are not counted. It is not necessary for a partnership to have 250 or more partners at any one time in a taxable year for the partnership to constitute a large partnership.

sequent taxable years unless revoked with the consent of the Secretary.

A partnership is considered to be substantially engaged in oil and gas activities if at least 25 percent of the average value of its assets during the taxable year consists of oil or gas properties.[101] In making this determination, a partnership is treated as owning its proportionate share of assets of any partnership in which it holds an interest.

The bill provides special rules for large partnerships with oil and gas activities that operate under the simplified reporting regime (i.e., either (1) large partnerships that are substantially engaged in oil and gas activities and which elect to use the regime, or (2) large partnerships that are not substantially engaged in oil and gas operations, but do have some oil and gas activities).

Effective date.—Partnership taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with a modification of the definition of a partnership to which the simplified flow-through rules apply. Under the conference agreement, a partnership to which these rules apply is an electing large partnership, which is defined as any partnership that elects under the provision, if the number of partners in the preceding partnership taxable year is 100 or more. To the extent so provided in regulations, if the number of partners in any taxable year falls below 100, the partnership is not treated as a large partnership. The conference agreement retains the House bill rules relating to service partnerships, commodity partnerships, and partnerships holding oil and gas properties.

2. SIMPLIFIED AUDIT PROCEDURES FOR LARGE PARTNERSHIPS (SEC. 14302 OF THE HOUSE BILL)

Present law

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") established unified audit rules applicable to all but certain small (10 or fewer partners) partnerships. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, as provided by regulations.

Under the TEFRA rules, a partner must report all partnership items consistently with the partnership return or must notify the IRS of any inconsistency. If a partner fails to report any partnership item consistently with the partnership return, the IRS may make a computational adjustment and immediately assess any additional tax that results.

[101] For this purpose, "oil or gas properties" means the mineral interests in oil gas which are of a character with respect to which a deduction for depletion is allowable under section 611.

Under the TEFRA rules, a partner must report all partnership items consistently with the partnership return or must notify the IRS of any inconsistency. If a partner fails to report any partnership item consistently with the partnership return, the IRS may make a computational adjustment and immediately assess any additional tax that results.

The IRS may challenge the reporting position of a partnership by conducting a single administrative proceeding to resolve the issue with respect to all partners. But the IRS must still assess any resulting deficiency against each of the taxpayers who were partners in the year in which the understatement of tax liability arose.

The IRS generally is required to give notice of the beginning of partnership-level administrative proceedings and any resulting administrative adjustment to all partners whose names and addresses are furnished to the IRS. For partnerships with more than 100 partners, however, the IRS generally is not required to give notice to any partner whose profits interest is less than one percent.

House bill

The House bill creates a new audit system for large partnerships. The provision defines "large partnership" the same way for audit and reporting purposes (generally partnerships with at least 250 partners) except that certain oil and gas partnerships exempted from the large partnership reporting requirements are large partnerships for the audit rules.

As under present law, large partnerships and their partners are subject to unified audit rules. Thus, the tax treatment of "partnership items" are determined at the partnership, rather than the partner, level. The term "partnership items" is defined as under present law.

Unlike present law, however, partnership adjustments generally will flow through to the partners for the year in which the adjustment takes effect. Thus, the current-year partners' share of current-year partnership items of income, gains, losses, deductions, or credits will be adjusted to reflect partnership adjustments that take effect in that year. The adjustments generally will not affect prior-year returns of any partners (except in the case of changes to any partner's distributive shares).

In lieu of flowing an adjustment through to its partners, the partnership may elect to pay an imputed underpayment. The imputed underpayment generally is calculated by netting the adjustments to the income and loss items of the partnership and multiplying that amount by the highest tax rate (whether individual or corporate). A partner may not file a claim for credit or refund of his allocable share of the payment. A partnership may make this election only if it meets requirements set forth in Treasury regulations designed to ensure payment (for example, in the case of a foreign partnership).

Effective date.—Partnership taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

3. DUE DATE FOR FURNISHING INFORMATION TO PARTNERS OF LARGE PARTNERSHIPS (SEC. 14303 OF THE HOUSE BILL)

Present law

A partnership required to file an income tax return with the Internal Revenue Service must also furnish an information return to each of its partners on or before the day on which the income tax return for the year is required to be filed, including extensions. Under regulations, a partnership must file its income tax return on or before the fifteenth day of the fourth month following the end of the partnership's taxable year (on or before April 15, for calendar year partnerships). This is the same deadline by which most individual partners must file their tax returns.

House bill

The House bill provides that a large partnership must furnish information returns to partners by the first March 15 following the close of the partnership's taxable year. Large partnerships are only those partnerships subject to the simplified reporting rules for large partnerships (generally, those with at least 250 partners, or electing partnerships with at least 100 partners).

The provision also provides that, if the partnership is required to provide copies of the information returns to the Internal Revenue Service on magnetic media, each schedule (such as each Schedule K–1) with respect to each partner is treated as a separate information return with respect to the corrective periods and penalties that are generally applicable to all information returns.

Effective date.—Partnership taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

4. PARTNERSHIP RETURNS REQUIRED ON MAGNETIC MEDIA (SEC. 14304 OF THE HOUSE BILL)

Present law

Partnerships are permitted, but not required, to provide the tax return of the partnership (Form 1065), as well as copies of the schedules sent to each partner (Form K–1), to the Internal Revenue Service on magnetic media.

House bill

The bill provides generally that any partnership is required to provide the tax return of the partnership (Form 1065), as well as copies of the schedule sent to each partner (Form K–1), to the Internal Revenue Service on magnetic media. An exception is provided for partnerships with 100 or fewer partners.

Effective date.—Partnership taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. TREATMENT OF PARTNERSHIP ITEMS OF INDIVIDUAL RETIREMENT ACCOUNTS (SEC. 14305 OF THE HOUSE BILL)

Present law

Return filing requirements

An individual retirement account (''IRA'') is a trust which generally is exempt from taxation except for the taxes imposed on income from an unrelated trade or business. A fiduciary of a trust that is exempt from taxation (but subject to the taxes imposed on income from an unrelated trade or business) generally is required to file a return on behalf of the trust for a taxable year if the trust has gross income of $1,000 or more included in computing unrelated business taxable income for that year (Treas. Reg. sec. 1.6012–3(a)(5)).

Unrelated business taxable income is the gross income (including gross income from a partnership) derived by an exempt organization from an unrelated trade or business, less certain deductions which are directly connected with the carrying on of such trade or business (sec. 512(a)(1). In calculating unrelated business taxable income, exempt organizations (including IRAs) generally also are permitted a specific deduction of $1,000 (sec. 512(b)(12)).

Unified audits of partnerships

All but certain small partnerships are subject to unified audit rules established by the Tax Equity and Fiscal Responsibility Act of 1982. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, including such items as gross income and deductions of the partnership.

House bill

The House bill modifies the filing threshold for an IRA with an interest in a partnership that is subject to the partnership-level audit rules. A fiduciary of such an IRA could treat the trust's share of partnership taxable income as gross income, for purposes of determining whether the trust meets the $1,000 gross income filing threshold. A fiduciary of an IRA that receives taxable income from a partnership that is subject to partnership-level audit rules of less than $1,000 (before the $1,000 specific deduction) is not required to file an income tax return if the IRA does not have any other income from an unrelated trade or business.

Effective date.—Taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. OTHER PARTNERSHIP AUDIT RULES

1. TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS (SEC. 14311 OF THE HOUSE BILL)

Present law

Partnership proceedings under rules enacted in TEFRA[102] must be kept separate from deficiency proceedings involving the partners in their individual capacities. Prior to the Tax Court's opinion in *Munro* v. *Commissioner*, 92 T.C. 71 (1989), the IRS computed deficiencies by assuming that all items that were subject to the TEFRA partnership procedures were correctly reported on the taxpayer's return. However, where the losses claimed from TEFRA partnerships were so large that they offset any proposed adjustments to nonpartnership items, no deficiency could arise from a non-TEFRA proceeding, and if the partnership losses were subsequently disallowed in a partnership proceeding, the non-TEFRA adjustments might be uncollectible because of the expiration of the statute of limitations with respect to nonpartnership items.

Faced with this situation in *Munro*, the IRS issued a notice of deficiency to the taxpayer that presumptively disallowed the taxpayer's TEFRA partnership losses for computational purposes only. Although the Tax Court ruled that a deficiency existed and that the court had jurisdiction to hear the case, the court disapproved of the methodology used by the IRS to compute the deficiency. Specifically, the court held that partnership items (whether income, loss, deduction, or credit) included on a taxpayer's return must be completely ignored in determining whether a deficiency exists that is attributable to nonpartnership items.

House bill

The House bill overrules *Munro* and allow the IRS to return to its prior practice of computing deficiencies by assuming that all TEFRA items whose treatment has not been finally determined had been correctly reported on the taxpayer's return. This eliminates the need to do special computations that involve the removal of TEFRA items from a taxpayer's return, and will restore to taxpayers a prepayment forum with respect to the TEFRA items. In addition, the provision provides a special rule to address the factual situation presented in *Munro*.

Specifically, the House bill provides a declaratory judgment procedure in the Tax Court for adjustments to an oversheltered return. An oversheltered return is a return that shows no taxable in-

[102] Tax Equity and Fiscal Responsibility Act of 1982.

come and a net loss from TEFRA partnerships. In such a case, the IRS is authorized to issue a notice of adjustment with respect to non-TEFRA items, notwithstanding that no deficiency would result from the adjustment. However, the IRS could only issue such a notice if a deficiency would have arisen in the absence of the net loss from TEFRA partnerships.

The Tax Court is granted jurisdiction to determine the correctness of such an adjustment as well as to make a declaration with respect to any other item for the taxable year to which the notice of adjustment relates, except for partnership items and affected items which require partner-level determinations. No tax is due upon such a determination, but a decision of the Tax Court is treated as a final decision, permitting an appeal of the decision by either the taxpayer or the IRS. An adjustment determined to be correct would thus have the effect of increasing the taxable income that is deemed to have been reported on the taxpayer's return. If the taxpayer's partnership items were then adjusted in a subsequent proceeding, the IRS has preserved its ability to collect tax on any increased deficiency attributable to the nonpartnership items.

Alternatively, if the taxpayer chooses not to contest the notice of adjustment within the 90-day period, the bill provides that when the taxpayer's partnership items are finally determined, the taxpayer has the right to file a refund claim for tax attributable to the items adjusted by the earlier notice of adjustment for the taxable year. Although a refund claim is not generally permitted with respect to a deficiency arising from a TEFRA proceeding, such a rule is appropriate with respect to a defaulted notice of adjustment because taxpayers may not challenge such a notice when issued since it does not require the payment of additional tax.

In addition, the House bill incorporates a number of provisions intended to clarify the coordination between TEFRA audit proceedings and individual deficiency proceedings. Under these provisions, any adjustment with respect to a non-partnership item that caused an increase in tax liability with respect to a partnership item would be treated as a computational adjustment and assessed after the conclusion of the TEFRA proceeding. Accordingly, deficiency procedures do not apply with respect to this increase in tax liability, and the statute of limitations applicable to TEFRA proceedings are controlling.

Effective date.—Partnership taxable years ending after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. PARTNERSHIP RETURN TO BE DETERMINATIVE OF AUDIT PROCEDURES TO BE FOLLOWED (SEC. 14312 OF THE HOUSE BILL)

Present law

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

House bill

The House bill permits the IRS to apply the TEFRA audit procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply. Similarly, the provision permits the IRS to apply the normal deficiency procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply.

Effective date.—Partnership taxable years ending after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

3. PROVISIONS RELATING TO STATUTE OF LIMITATIONS

A. SUSPEND STATUTE WHEN AN UNTIMELY PETITION IS FILED (SEC. 14313(A) OF THE HOUSE BILL)

Present law

In a deficiency case, section 6503(a) provides that if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, the period of limitations on assessment and collection is suspended until the decision of the Tax Court becomes final, and for 60 days thereafter. The counterpart to this provision with respect to TEFRA cases is contained in section 6229(d). That section provides that the period of limitations is suspended for the period during which an action may be brought under section 6226 and, if an action is brought during such period, until the decision of the court becomes final, and for 1 year thereafter. As a result of this difference in language, the running of the statute of limitations in a TEFRA case will only be tolled by the filing of a timely petition whereas in a deficiency case, the statute of limitations is tolled by the filing of any petition, regardless of whether the petition is timely.

House bill

The House bill conforms the suspension rule for the filing of petitions in TEFRA cases with the rule under section 6503(a) pertaining to deficiency cases. Under the provision, the statute of limitations in TEFRA cases is suspended by the filing of any petition under section 6226, regardless of whether the petition is timely or valid, and the suspension will remain in effect until the decision of the court becomes final, and for one year thereafter. Hence, if the statute of limitations is open at the time that an untimely petition is filed, the limitations period would no longer continue to run and possibly expire while the action is pending before the court.

Effective date.—All cases in which the period of limitations has not expired under present law as of the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. SUSPEND STATUTE OF LIMITATIONS DURING BANKRUPTCY PROCEEDINGS (SEC. 14313(B) OF THE HOUSE BILL)

Present law

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6503(h) provides for the suspension of the limitations period during the pendency of a bankruptcy proceeding. However, this provision only applies to the limitations periods provided in sections 6501 and 6502.

Under present law, because the suspension provision in section 6503(h) applies only to the limitations periods provided in section 6501 and 6502, some uncertainty exists as to whether section 6503(h) applies to suspend the limitations period pertaining to converted items provided in section 6229(f) when a petition naming a partner as a debtor in a bankruptcy proceeding is filed. As a result, the limitations period provided in section 6229(f) may continue to run during the pendency of the bankruptcy proceeding, notwithstanding that the IRS is prohibited from making an assessment against the debtor because of the automatic stay provisions of the Bankruptcy Code.

House bill

The House bill clarifies that the statute of limitations is suspended for a partner who is named in a bankruptcy petition. The suspension period is for the entire period during which the IRS is prohibited by reason of the bankruptcy proceeding from making an assessment, and for 60 days thereafter. The provision does not purport to create any inference as to the proper interpretation of present law.

Effective date.—All cases in which the period of limitations has not expired under present law as of the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

C. EXTEND STATUTE OF LIMITATIONS FOR BANKRUPT TMPS (SEC. 14313(C) OF THE HOUSE BILL)

Present law

Section 6229(b)(1)(B) provides that the statute of limitations is extended with respect to all partners in the partnership by an agreement entered into between the tax matters partner (TMP) and the IRS. However, Temp. Treas. Reg. secs. 301.6231(a)(7)–1T(1)(4) and 301.6231(c)–7T(a) provide that upon the filing of a petition naming a partner as a debtor in a bankruptcy proceeding, that partner's partnership items convert to nonpartnership items, and if the debtor was the tax matters partner, such status terminates. These rules are necessary because of the automatic stay provision contained in 11 U.S.C. sec. 362(a)(8). As a result, if a consent to extend the statute of limitations is signed by a person who would be the TMP but for the fact that at the time that the agreement is executed the person was a debtor in a bankruptcy proceeding, the consent would not be binding on the other partners because the person signing the agreement was no longer the TMP at the time that the agreement was executed.

House bill

The House bill provides that unless the IRS is notified of a bankruptcy proceeding in accordance with regulations, the IRS can rely on a statute extension signed by a person who is the tax matters partner but for the fact that said person was in bankruptcy at the time that the person signed the agreement. Statute extensions granted by a bankrupt TMP in these cases are binding on all of the partners in the partnership. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective date.—Effective for extension agreements entered into after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

4. EXPANSION OF SMALL PARTNERSHIP EXCEPTION (SEC. 14314 OF THE HOUSE BILL)

Present law

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

House bill

The House bill permits a small partnership to have a C corporation as a partner or to specially allocate items without jeopardizing its exception from the TEFRA rules. However, the provision retains the prohibition of present law against having a flow-through entity (other than an estate of a deceased partner) as a partner for purposes of qualifying for the small partnership exception.

Effective date.—Partnership taxable years ending after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

5. EXCLUSION OF PARTIAL SETTLEMENTS FROM 1-YEAR LIMITATION ON ASSESSMENT (SEC. 14315 OF THE HOUSE BILL)

Present law

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6231(b)(1)(C) provides that the partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the partner enters into a settlement agreement with the IRS with respect to such items.

House bill

The House bill provides that if a partner and the IRS enter into a settlement agreement with respect to some but not all of the partnership items in dispute for a partnership taxable year and other partnership items remain in dispute, the period for assessing any tax attributable to the settled items is determined as if such agreement had not been entered into. Consequently, the limitations period that is applicable to the last item to be resolved for the partnership taxable year is controlling with respect to all disputed partnership items for the partnership taxable year. The provision does not purport to create any inference as to the proper interpretation of present law.

Effective date.—Settlements entered into after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

6. EXTENSION OF TIME FOR FILING A REQUEST FOR ADMINISTRATIVE ADJUSTMENT (SEC. 14316 OF THE HOUSE BILL)

Present law

If an agreement extending the statute is entered into with respect to a non-TEFRA statute of limitations, that agreement also extends the statute of limitations for filing refund claims (sec. 6511(c)). There is no comparable provision for extending the time for filing refund claims with respect to partnership items subject to the TEFRA partnership rules.

House bill

The House bill provides that if a TEFRA statute extension agreement is entered into, that agreement also extends the statute of limitations for filing refund claims attributable to partnership items or affected items until 6 months after the expiration of the limitations period for assessments.

Effective date.—Effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

7. AVAILABILITY OF INNOCENT SPOUSE RELIEF IN CONTEXT OF PARTNERSHIP PROCEEDINGS (SEC. 14317 OF THE HOUSE BILL)

Present law

In general, an innocent spouse may be relieved of liability for tax, penalties and interest if certain conditions are met (sec. 6013(e)). However, existing law does not provide the spouse of a partner in a TEFRA partnership with a judicial forum to raise the innocent spouse defense with respect to any tax or interest that relates to an investment in a TEFRA partnership.

House bill

The House bill provides both a prepayment forum and a refund forum for raising the innocent spouse defense in TEFRA cases.

With respect to a prepayment forum, the provision provides that within 60 days of the date that a notice of computational adjustment relating to partnership items is mailed to the spouse of a partner, the spouse could request that the assessment be abated. Upon receipt of such a request, the assessment is abated and any reassessment will be subject to the deficiency procedures. If an abatement is requested, the statute of limitations does not expire before the date which is 60 days after the date of the abatement. If the spouse files a petition with the Tax Court, the Tax Court only has jurisdiction to determine whether the requirements of section 6013(e) have been satisfied. In making this determination, the treatment of the partnership items that gave rise to the liability in question is conclusive.

Alternatively, the House bill provides that the spouse of a partner could file a claim for refund to raise the innocent spouse defense. The claim has to be filed within 6 months from the date that the notice of computational adjustment is mailed to the spouse. If the claim is not allowed, the spouse could file a refund action. For purposes of any claim or suit under this provision, the treatment of the partnership items that gave rise to the liability in question is conclusive.

Effective date.—Effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

8. DETERMINATION OF PENALTIES AT PARTNERSHIP LEVEL (SEC. 14318 OF THE HOUSE BILL)

Present law

Partnership items include only items that are required to be taken into account under the income tax subtitle. Penalties are not partnership items since they are contained in the procedure and administration subtitle. As a result, penalties may only be asserted against a partner through the application of the deficiency procedures following the completion of the partnership-level proceeding.

House bill

The House bill provides that the partnership-level proceeding is to include a determination of the applicability of penalties at the partnership level. However, the provision allows partners to raise any partner-level defenses in a refund forum.

Effective date.—Effective for partnership taxable years ending after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

9. PROVISIONS RELATING TO TAX COURT JURISDICTION (SEC. 14319 OF THE HOUSE BILL)

Present law

Improper assessment and collection activities by the IRS during the 150-day period for filing a petition or during the pendency of any Tax Court proceeding, "may be enjoined in the proper court." Present law may be unclear as to whether this includes the Tax Court.

For a partner other than the Tax Matters Partner to be eligible to file a petition for redetermination of partnership items in any court or to participate in an existing case, the period for assessing any tax attributable to the partnership items of that partner must not have expired. Since such a partner would only be treated as a party to the action if the statute of limitations with respect to them was still open, the law is unclear whether the partner would have standing to assert that the statute of limitations had expired with respect to them.

House bill

The House bill clarifies that an action to enjoin premature assessments of deficiencies attributable to partnership items may be brought in the Tax Court. The provision also permits a partner to participate in an action or file a petition for the sole purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired for that person. Additionally, the provision clarifies that the Tax Court has overpayment jurisdiction with respect to affected items.

Effective date.—Effective for partnership taxable years ending after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

10. TREATMENT OF PREMATURE PETITIONS FILED BY NOTICE PARTNERS OR 5-PERCENT GROUPS (SEC. 14320 OF THE HOUSE BILL)

Present law

The Tax Matters Partner is given the exclusive right to file a petition for a readjustment of partnership items within the 90-day period after the issuance of the notice of a final partnership administrative adjustment (FPAA). If the Tax Matters Partner does not file a petition within the 90-day period, certain other partners are permitted to file a petition within the 60-day period after the close of the 90-day period. There are ordering rules for determining which action goes forward and for dismissing other actions.

House bill

The House bill treats premature petitions filed by certain partners within the 90-day period as being filed on the last day of the following 60-day period under specified circumstances, thus affording the partnership with an opportunity for judicial review that is not available under present law.

Effective date.—Effective with respect to petitions filed after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

11. BONDS IN CASE OF APPEALS FROM CERTAIN PROCEEDINGS (SEC. 14321 OF THE HOUSE BILL)

Present law

A bond must be filed to stay the collection of deficiencies pending the appeal of the Tax Court's decision in a TEFRA proceeding. The amount of the bond must be based on the court's estimate of the aggregate deficiencies of the partners.

House bill

The House bill clarifies that the amount of the bond should be based on the Tax Court's estimate of the aggregate liability of the parties to the action (and not all of the partners in the partnership). For purposes of this provision, the amount of the bond could be estimated by applying the highest individual rate to the total adjustments determined by the Tax Court and doubling that amount to take into account interest and penalties.

Effective date.—Effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

12. SUSPENSION OF INTEREST WHERE DELAY IN COMPUTATIONAL ADJUSTMENT RESULTING FROM CERTAIN SETTLEMENTS (SEC. 14322 OF THE HOUSE BILL)

Present law

Interest on a deficiency generally is suspended when a taxpayer executes a settlement agreement with the IRS and waives the restrictions on assessments and collections, and the IRS does not issue a notice and demand for payment of such deficiency within 30 days. Interest on a deficiency that results from an adjustment of partnership items in TEFRA proceedings, however, is not suspended.

House bill

The House bill suspends interest where there is a delay in making a computational adjustment relating to a TEFRA settlement.

Effective date.—Effective with respect to adjustments relating to taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

13. SPECIAL RULES FOR ADMINISTRATIVE ADJUSTMENT REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES (SEC. 14323 OF THE HOUSE BILL)

Present law

The non-TEFRA statute of limitations for filing a claim for credit or refund generally is the later of (1) three years from the date the return in question was filed or (2) two years from the date the claimed tax was paid, whichever is later (sec. 6511(b)). However, an extended period of time, seven years from the date the return was due, is provided for filing a claim for refund of an overpayment resulting from a deduction for a worthless security or bad debt (sec. 6511(d)).

Under the TEFRA partnership rules, a request for administrative adjustment ("RAA") must be filed within three years after the later of (1) the date the partnership return was filed or (2) the due date of the partnership return (determined without regard to extensions) (sec. 6227(a)(1)). In addition, the request must be filed before a final partnership administrative adjustment ("FPAA") is mailed for the taxable year (sec. 6227(a)(2)). There is no special provision for extending the time for filing an RAA that relates to a deduction for a worthless security or an entirely worthless bad debt.

House bill

The House bill extends the time for the filing of an RAA relating to the deduction by a partnership for a worthless security or bad debt. In these circumstances, in lieu of the three-year period provided in sec. 6227(a)(1), the period for filing an RAA is seven years from the date the partnership return was due with respect to which the request is made (determined without regard to extensions). The RAA is still required to be filed before the FPAA is mailed for the taxable year.

Effective date.—Effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

XIV. Foreign Simplification Provisions

A. Modification of Passive Foreign Investment Company Provisions to Eliminate Overlap With Subpart F and to Allow Mark-to-Market Election (Secs. 14401–14404 of the House Bill)

Present law

Under the rules of subpart F (secs. 951–964), certain 10-percent U.S. shareholders of a controlled foreign corporation (CFC) are required to include in income currently their shares of certain earnings of the CFC.

U.S. shareholders of a passive foreign investment company (PFIC) are subject to tax and an interest charge reflecting the value of deferral when earnings of the PFIC are included in the shareholders' income upon a distribution from the PFIC or a disposition of the PFIC stock. Alternatively, the U.S. shareholders may elect to include in income currently their shares of the PFIC's earnings.

A foreign corporation is a PFIC if it satisfies a passive income test or a passive asset test. A foreign corporation that is a CFC may also be a PFIC.

House bill

Elimination of overlap between subpart F and the PFIC provisions

In the case of a PFIC that is also a CFC, the House bill generally treats the corporation as not a PFIC with respect to certain 10-percent shareholders. This rule applies if the corporation is a CFC (within the meaning of section 957(a)) and the shareholder is a U.S. shareholder (within the meaning of section 951(b)) of such corporation (i.e., if the shareholder is subject to the current inclusion rules of subpart F with respect to such corporation). Moreover, the rule applies for that portion of the shareholder's holding period with respect to the corporation's stock which is after December 31, 1995 and during which the corporation is a CFC and the shareholder is a U.S. shareholder. Accordingly, a shareholder that is subject to current inclusion under the subpart F rules with respect to stock of a PFIC that is also a CFC generally is not also subject to the PFIC provisions with respect to the same stock. As under present law, the PFIC provisions continue to apply in the case of a PFIC that is also a CFC to shareholders that are not subject to subpart F (i.e., to shareholders that are U.S. persons and that own (directly, indirectly, or constructively) less than 10 percent of the corporation's stock by vote).

If a shareholder of a PFIC is subject to the rules applicable to nonqualified funds before becoming eligible for the special rules provided under the House bill for shareholders that are subject to subpart F, the stock held by such shareholder continues to be treated as PFIC stock unless the shareholder makes an election to pay tax and an interest charge with respect to the unrealized appreciation in the stock or the accumulated earnings of the corporation. This rule, which applies under current law to PFICs that had been nonqualified funds and that cease to satisfy the tests for PFIC status, prevents the shareholder from avoiding the interest charge imposed by the PFIC rules with respect to amounts accumulated by the PFIC while the shareholder held stock of the corporation but before the shareholder was subject to subpart F.

If a shareholder is not subject to the PFIC provisions because the shareholder is subject to subpart F and the shareholder subsequently ceases to be subject to subpart F with respect to the corporation, for purposes of the PFIC provisions, the shareholder's holding period for such stock is treated as beginning immediately after such cessation. Accordingly, in applying the rules applicable to PFICs that are not qualified electing funds, the earnings of the corporation are not attributed to the period during which the shareholder was subject to subpart F with respect to the corporation and was not subject to the PFIC provisions.

Mark-to-market election

The House bill allows a shareholder of a PFIC to make a mark-to-market election with respect to the stock of the PFIC, provided that such stock is marketable (as defined below). Under such an election, the shareholder includes in income each year an amount equal to the excess, if any, of the fair market value of the PFIC stock as of the close of the taxable year over the shareholder's adjusted basis in such stock. The shareholder is allowed a deduction for the excess, if any, of the adjusted basis of the PFIC stock over its fair market value as of the close of the taxable year. However, deductions are allowable under this rule only to the extent of the excess, if any, of the total amount of mark-to-market gains with respect to the stock included by the shareholder for prior taxable years over the amount of mark-to-market losses with respect to such stock that were allowed as deductions for prior taxable years.

The election provided in the House bill is available only for PFIC stock that is "marketable." For this purpose, PFIC stock is considered marketable if it is regularly traded on a national securities exchange that is registered with the Securities and Exchange Commission or on the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934. In addition, PFIC stock is considered marketable if it is regularly traded on any exchange or market that the Secretary of the Treasury determines has rules sufficient to ensure that the market price represents a legitimate and sound fair market value. In identifying foreign exchanges that qualify for these purposes, it is intended that the Secretary not be required to include exchanges that satisfy standards established under Federal securities law and regulations. Any option on stock that is considered marketable under the foregoing rules is treated as marketable, to the extent provided in regulations. It is intended that the Secretary may adopt a definition of the term "regularly traded" that differs from definitions provided for other purposes under the Code. Further, it is intended that the Secretary not be bound by definitions applied for purposes of enforcing other laws, including securities laws. PFIC stock also is treated as marketable, to the extent provided in regulations, if the PFIC offers for sale (or has outstanding) stock of which it is the issuer and which is redeemable at its net asset value in a manner comparable to a U.S. regulated investment company (RIC).

In addition, the House bill treats as marketable any PFIC stock owned by a RIC that offers for sale (or has outstanding) any stock of which it is the issuer and which is redeemable at its net asset value. It is believed that the RIC's determination of PFIC stock value for this non-tax purpose would ensure a sufficiently accurate determination of the fair market value of the PFIC stock owned by the RIC. The House bill also treats as marketable any PFIC stock held by any other RIC that otherwise publishes net asset valuations at least annually, except to the extent provided in regulations. It is believed that even for RICs that do not make a market in their own stock, but that do regularly report their net asset values in compliance with the securities laws, inaccurate valuation may bring exposure to legal liabilities, and this exposure may ensure the reliability of the values such RICs assign to the PFIC stock they hold. However, it is intended that Treasury regulations will disallow marketable treatment for nonmarketable PFIC stock held by a RIC that is not required to perform such net asset valuation at the close of each taxable year, that does not publish such valuation, or that otherwise does not provide what the Secretary regards as sufficient indicia of the reliability of its valuations.

The shareholder's adjusted basis in the PFIC stock is adjusted to reflect the amounts included or deducted under this election. In the case of stock owned indirectly by a U.S. person through a foreign entity (as discussed below), the basis adjustments for mark-to-market gains and losses apply to the basis of the PFIC in the hands of the intermediary owner, but only for purposes of the subsequent application of the PFIC rules to the tax treatment of the indirect U.S. owner. In addition, similar basis adjustments are made to the adjusted basis of the property actually held by the U.S. person by reason of which the U.S. person is treated as owning PFIC stock.

Amounts included in income pursuant to a mark-to-market election, as well as gain on the actual sale or other disposition of the PFIC stock, are treated as ordinary income.[103] Ordinary loss treatment also applies to the deductible portion of any mark-to-market loss on PFIC stock, as well as to any loss realized on the actual sale or other disposition of PFIC stock to the extent that the amount of such loss does not exceed the net mark-to-market gains previously included with respect to such stock. The source of amounts with respect to a mark-to-market election generally is determined in the same manner as if such amounts were gain or loss from the sale of stock in the PFIC.

An election to mark to market applies to the taxable year for which made and all subsequent taxable years, unless the PFIC stock ceases to be marketable or the Secretary of the Treasury consents to the revocation of such election.

[103] For purposes of the rules under section 851(b) regarding eligibility as a RIC, income includible pursuant to the election is treated as a dividend.

Under constructive ownership rules, U.S. persons that own PFIC stock through certain foreign entities may make this election with respect to the PFIC. These constructive ownership rules apply to treat PFIC stock owned directly or indirectly by or for a foreign partnership, trust, or estate as owned proportionately by the partners or beneficiaries, except as provided in regulations.[104] Stock in a PFIC that is thus treated as owned by a person is treated as actually owned by that person for purposes of again applying the constructive ownership rules. In the case of a U.S. person that is treated as owning PFIC stock by application of this constructive ownership rule, any disposition by the U.S. person or by any other person that results in the U.S. person being treated as no longer owning the PFIC stock, as well as any disposition by the person actually owning the PFIC stock, is treated as a disposition by the U.S. person of the PFIC stock.

In addition, a CFC that owns stock in a PFIC is treated as a U.S. person that may make the election with respect to such PFIC stock. Any amount includible (or deductible) in the CFC's gross income pursuant to this mark-to-market election is treated as foreign personal holding company income (or a deduction allocable to foreign personal holding company income). The source of such amounts, however, is determined by reference to the actual residence of the CFC.

In the case of a taxpayer that makes the mark-to-market election with respect to stock in a PFIC that is a nonqualified fund after the beginning of the taxpayer's holding period with respect to such stock, a coordination rule applies to ensure that the taxpayer does not avoid the interest charge with respect to amounts attributable to periods before such election. A similar rule applies to RICs that make the mark-to-market election under the House bill after the beginning of their holding period with respect to PFIC stock (to the extent that the regulated investment company had not previously marked to market the stock of the PFIC).

Except as provided in the coordination rules described above, the rules of section 1291 (with respect to nonqualified funds) do not apply to a shareholder of a PFIC if a mark-to-market election is in effect for the shareholder's taxable year. Moreover, in applying section 1291 in a case where a mark-to-market election was in effect for any prior taxable year, the shareholder's holding period for the PFIC stock is treated as beginning immediately after the last taxable year for which such election applied.

A special rule applicable in the case of a PFIC shareholder that becomes a U.S. person treats the adjusted basis of any PFIC stock held by such person on the first day of the year in which such shareholder becomes a U.S. person as equal to the greater of its fair market value on such date or its adjusted basis on such date. Such rule applies only for purposes of the mark-to-market election. This rule ensures that the appreciation in the stock's value prior to the time that the shareholder becomes subject to the U.S. tax jurisdiction is not subject to U.S. tax under the mark-to-market election.

[104] For this purpose, it is intended that proportionate ownership will be determined by taking into account any special or discretionary allocations of the distributions or gains with respect to the PFIC stock.

Clarifications of definition of passive income

The House bill clarifies the definition of passive income for purposes of the PFIC provisions in two respects. First, the House bill clarifies that the same-country exceptions from the definition of foreign personal holding company income in section 954(c) do not apply in determining passive income for purposes of the PFIC definition.[105] Second, the House bill clarifies that foreign trade income of a foreign sales corporation does not constitute passive income for purposes of the PFIC definition.

Effective date

The provision is effective for taxable years of U.S. persons beginning after December 31, 1995, and taxable years of foreign corporations ending with or within such taxable years of U.S. persons.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

B. TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

1. GENERAL PROVISIONS AFFECTING TREATMENT OF CONTROLLED FOREIGN CORPORATIONS (SECS. 14411–14413 OF THE HOUSE BILL)

Present law

If an upper-tier controlled foreign corporation ("CFC") sells stock of a lower-tier CFC, the gain generally is included in the income of certain U.S. shareholders as subpart F income and the U.S. shareholder's basis in the stock of the first-tier CFC is increased to account for the inclusion. The inclusion is not characterized for foreign tax credit limitation purposes by reference to the nature of the income of the lower-tier CFC; instead it generally is characterized as passive income.

For foreign tax credit limitation purposes, a CFC is not treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a CFC and, except as provided in regulations, the recipient of the distribution was a U.S. shareholder in such corporation.

If subpart F income of a lower-tier CFC is included in the gross income of a U.S. shareholder, no provision of present law allows adjustment of the basis of the upper-tier CFC's stock in the lower-tier CFC.

The subpart F income earned by a foreign corporation during its taxable year is taxed to the persons who are U.S. shareholders of the corporation on the last day, in that year, on which the corporation is a CFC. In the case of a U.S. shareholder who acquired stock in a CFC during the year, such inclusions are reduced by all or a portion of the amount of dividends paid in that year by the foreign corporation to any person other than the acquirer with respect to that stock.

[105] H. Rept. No. 100–795, 100th Cong., 2d Sess. 272 (1988); S. Rept. No. 100–445, 100th Cong., 2d Sess. 285 (1988).

If in a year after the year of income inclusion under the subpart F provisions of the Code, a U.S. shareholder in the CFC receives a distribution from the corporation, the distribution may be deemed to come first out of the corporation's previously taxed income and, therefore, may be excluded from the U.S. shareholder's income. However, a distribution by a foreign corporation to a domestic corporation of earnings and profits previously taxed under subpart F is treated as an actual dividend, solely for purposes of determining the indirect foreign tax credit available to the domestic corporation.

As a general rule, subpart F income does not include income earned from sources within the United States if the income is effectively connected with the conduct of a U.S. trade or business by the CFC. This general rule does not apply, however, if the income is exempt from, or subject to a reduced rate of, U.S. tax pursuant to a provision of a U.S. treaty.

A U.S. corporation that owns at least 10 percent of the voting stock of a foreign corporation is treated as if it had paid a share of the foreign income taxes paid by the foreign corporation in the year in which the foreign corporation's earnings and profits become subject to U.S. tax as dividend income of the U.S. shareholder. A U.S. corporation also may be deemed to have paid taxes paid by a second- or third-tier foreign corporation if certain conditions are satisfied.

House bill

Lower-tier controlled foreign corporations

Characterization of gain on stock disposition

The House bill provides that if a CFC is treated as having gain from the sale or exchange of stock in a foreign corporation, the gain is treated as a dividend to the same extent that it would have been so treated under section 1248 if the CFC were a U.S. person. This provision, however, does not affect the determination of whether the corporation whose stock is sold or exchanged is a CFC.

Thus, for example, if a U.S. corporation owns 100 percent of the stock of a foreign corporation, which owns 100 percent of the stock of a second foreign corporation, then under the House bill, any gain of the first corporation upon a sale or exchange of stock of the second corporation is treated as a dividend for purposes of subpart F income inclusions to the U.S. shareholder, to the extent of earnings and profits of the second corporation attributable to periods in which the first foreign corporation owned the stock of the second foreign corporation while the latter was a CFC with respect to the U.S. shareholder.

As another example, assume that the U.S. corporation has always owned 40 percent of the voting stock and 60 percent of the value of all of the stock of a foreign corporation, which has always owned 40 percent of the voting stock and 60 percent of the value of all of the stock of a second foreign corporation. All the other stock of the foreign corporations has always been owned by foreign individuals unrelated to the U.S. corporation. In this case, the second foreign corporation has never been a CFC. Therefore, none of the gain of the first corporation upon a sale of stock of the second corporation is treated as a dividend.

Gain on disposition of stock in a related corporation created or organized under the laws of, and having a substantial part of its assets in a trade or business in, the same foreign country as the gain recipient, even if recharacterized as a dividend under the House bill, is not excluded from foreign personal holding company income under the same-country exception that applies to actual dividends.

The House bill provides that for purposes of this provision, a CFC is treated as having sold or exchanged stock if, under any provision of subtitle A of the Code, the CFC is treated as having gain from the sale or exchange of such stock. Thus, for example, if a CFC distributes to its shareholder stock in a foreign corporation, and the distribution results in gain being recognized by the CFC under section 311(b) as if the stock were sold to the shareholder for fair market value, the House bill makes clear that for purposes of this provision, the CFC is treated as having sold or exchanged the stock.

The House bill also repeals a provision added to the Code by the Technical and Miscellaneous Revenue Act of 1988 [106] (the "1988 Act") that, except as provided by regulations, requires a recipient of a distribution from a CFC to have been a United States shareholder of that CFC for the period during which the earnings and profits which gave rise to the distribution were generated in order to avoid treating the distribution as one coming from a noncontrolled section 902 corporation. Thus, under the House bill, a CFC is not treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a CFC, whether or not the recipient of the distribution was a U.S. shareholder of the corporation when the earnings and profits giving rise to the distribution were generated.

Adjustments to basis of stock

The House bill also provides that when a lower-tier CFC earns subpart F income, and stock in that corporation is later disposed of by an upper-tier CFC, the resulting income inclusion of the U.S. shareholders are, under regulations, adjusted to account for previous inclusions, in a manner similar to the adjustments currently provided to the basis of stock in a first-tier CFC. Thus, just as the basis of a U.S. shareholder in a first-tier CFC rises when subpart F income is earned and falls when previously taxed income is distributed, so as to avoid double taxation of the income on a later disposition of the stock of that company, it is intended that by regulation the subpart F income from gain on the disposition of a lower-tier CFC generally would be reduced by income inclusions of earnings that were not subsequently distributed by the lower-tier CFC. It is intended that the Secretary will have sufficient flexibility in promulgating regulations under this provision to permit adjustments only in those cases where, by virtue of the historical ownership structure of the corporations involved, the Secretary is satis-

[106] P.L. 100–647, section 1012(a)(10).

fied that the inclusions for which adjustments are to be made can be clearly identified.

For example, assume that a U.S. person is the owner of all of the stock of a first-tier CFC which, in turn, is the sole shareholder of a second-tier CFC. In year 1, the second-tier CFC earns $100 of subpart F income which is included in the U.S. person's gross income for that year. In year 2, the first-tier CFC disposes of the second-tier CFC's stock and recognizes $300 of income with respect to the disposition. All of that income would constitute subpart F foreign personal holding company income. Under the House bill, the Secretary is granted regulatory authority to reduce the U.S. person's year 2 subpart F inclusion by $100—the amount of year 1 subpart F income of the second-tier CFC that was included, in that year, in the U.S. person's gross income. Such an adjustment would, in effect, allow for a step-up in the basis of the stock of the second-tier CFC to the extent of its subpart F income previously included in the U.S. person's gross income.

As another example, assume the same facts as in the preceding paragraph except that in year 2, the first-tier CFC distributes the stock of the second-tier CFC to the U.S. person. Assume that as a result of the distribution, the first-tier CFC recognizes taxable income of $300 under section 311(b). This income represents subpart F income, $100 of which is due to no adjustment having been made to the basis of the second-tier CFC's stock for its year 1 subpart F income. The House bill contemplates that in such a situation, the $300 of subpart F income would be reduced under regulations to $200 to account for the year 1 subpart F income inclusion.

Subpart F inclusions in year of acquisition

If a U.S. shareholder acquires the stock of a CFC from another U.S. shareholder during a taxable year of the CFC in which it earns subpart F income, the House bill reduces the acquirer's subpart F income inclusion for that year by a portion of the amount of the dividend deemed (under sec. 1248) to be received by the transferor. The portion by which the inclusion is reduced (as is currently the case if a dividend was paid to the previous owner of the stock) would not exceed the lesser of the amount of dividends with respect to such stock deemed received (under sec. 1248) by other persons during the year or the amount determined by multiplying the subpart F income for the year by the proportion of the year during which the acquiring shareholder did not own the stock.

Distributions of previously taxed income

The House bill clarifies the appropriate scope of regulatory authority with respect to the treatment of cross-chain section 304 dividends out of the earnings of CFCs that were previously included in the income of a U.S. shareholder under subpart F. The House bill contemplates that in such a case, the Secretary in his discretion may by regulation treat such dividends as distributions of previously taxed income, with appropriate basis adjustments. It is also anticipated that other occasions may arise where the exercise of similar regulatory authority may be appropriate to avoid double income inclusions, or an inclusion or exclusion of income without a corresponding basis adjustment. Therefore, the House bill provides that, in addition to cases involving section 304, the Secretary may by regulation modify the application of subpart F in any other case where there would otherwise be a multiple inclusion of any item of income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of the structure of a U.S. shareholder's holdings in CFCs or by reason of other circumstances. The House bill is not intended to create any inference as to the application of present law in these cases.

Treatment of United States income earned by a controlled foreign corporation

The House bill provides that an exemption or reduction by treaty of the branch profits tax that would be imposed under section 884 on a CFC does not affect the general statutory exemption from subpart F income that is granted for U.S. source effectively connected income. For example, assume a CFC earns income of a type that generally would be subpart F income, and that income is earned from sources within the United States in connection with business operations therein. Further assume that repatriation of that income is exempted from the U.S. branch profits tax under a provision of an applicable U.S. income tax treaty. The House bill provides that, notwithstanding the treaty's effect on the branch tax, the income is not treated as subpart F income as long as it is not exempt from U.S. taxation (or subject to a reduced rate of tax) under any other treaty provision.

Extension of indirect foreign tax credit

The House bill extends the application of the indirect foreign tax credit (secs. 902 and 960) to certain taxes paid or accrued by certain fourth-, fifth-, and sixth-tier foreign corporations. In general, three requirements must be satisfied by a foreign company at any of these tiers to qualify for the credit. First, the company must be a CFC. Second, the domestic corporation referred to in section 902(a) must be a U.S. shareholder (as defined in sec. 951(b)) with respect to the foreign company. Third, the product of the percentage ownership of voting stock at each level from the U.S. corporation down must equal at least 5 percent. The House bill limits the application of the indirect foreign tax credit below the third tier to taxes paid or incurred in taxable years during which the payor is a CFC. No inference is intended as to the availability of indirect foreign tax credits, under present law, for taxes paid by foreign corporations in the first three tiers, for periods prior to the time when the present-law ownership requirements were met as to those corporations. All foreign taxes paid below the sixth tier of foreign corporations remain ineligible for the indirect foreign tax credit.

Effective dates

Lower-tier controlled foreign corporations.—The provision of the House bill that treats gains on dispositions of stock in lower-tier CFCs as dividends under section 1248 principles applies to gains recognized on transactions occurring after the date of enactment of the House bill.

The provision that expands look-through treatment, for foreign tax credit limitation purposes, of dividends from CFCs, is effective for distributions after the date of enactment.

The provision that provides for regulatory adjustments to U.S. shareholder inclusions, with respect to gains of CFCs from dispositions of stock in lower-tier CFCs the earnings of which have been previously taxed under the subpart F provisions of the Code, is effective for determining inclusions for taxable years of U.S. shareholders beginning after December 31, 1995. Thus, the House bill permits regulatory adjustments to an inclusion occurring after the effective date to account for income previously taxed under the subpart F provisions occurring both prior to and subsequent to the effective date of the provision.

Subpart F inclusions in year of acquisition.—The provision that permits dispositions of stock to be taken into consideration in determining a U.S. shareholder's subpart F inclusion for a taxable year is effective with respect to dispositions occurring after the date of enactment.

Distributions of previously taxed income.—The provision that allows the Secretary to make regulatory adjustments to avoid double inclusions in cases such as those to which section 304 applies takes effect on the date of enactment.

Treatment of United States source income earned by a controlled foreign corporation.—The provision concerning the effect of treaty exemptions from, or reductions of, the branch profits tax on the determination of subpart F income is effective for taxable years beginning after December 31, 1986.

Extension of indirect foreign tax credit.—The provision that extends application of the indirect foreign tax credit to certain CFCs below the third tier is effective for foreign taxes paid or incurred by CFCs for taxable years of such corporations beginning after the date of enactment.

In the case of any chain of foreign corporations the taxes of which would be eligible for the indirect foreign tax credit, under present law or under the House bill, but for the denial of indirect credits below the third or sixth tier, as the case may be, no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of enactment shall have the effect of permitting taxes to be taken into account under the indirect foreign tax credit provisions of the Code which could not have been taken into account under those provisions but for such transaction. As one example, no such transaction shall have the effect of permitting credits for taxes which, but for such transaction, would have been noncreditable (given the effective date provisions of the House bill) because they are taxes of a fourth-, fifth-, or sixth-tier corporation for a year beginning before the date that the House bill is enacted. No inference is intended regarding the creditability or noncreditability of such taxes under present law.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. REPEAL OF EXCESS PASSIVE ASSETS PROVISION (SEC. 14414 OF THE HOUSE BILL)

Present law

Under the rules of subpart F (secs. 951–964), certain 10-percent U.S. shareholders of a controlled foreign corporation (CFC) are required to include in income currently for U.S. tax purposes certain earnings of the CFC, whether or not such earnings are actually distributed currently to the shareholders. The 10-percent U.S. shareholders of a CFC are subject to current U.S. tax on their shares of certain income earned by the CFC (referred to as "subpart F income"). The 10-percent U.S. shareholders are also subject to current U.S. tax on their shares of the CFC's earnings to the extent such earnings are invested by the CFC in certain U.S. property.

In addition to these current inclusion rules, the Omnibus Budget Reconciliation Act of 1993 enacted section 956A, which applies another current inclusion rule to U.S. shareholders of a CFC. Section 956A requires the 10-percent U.S. shareholders of a CFC to include in income currently their shares of the CFC's earnings to the extent such earnings are invested by the CFC in excess passive assets. A CFC generally is treated as having excess passive assets if the average of the amounts of its passive assets exceeds 25 percent of the average of the amounts of its total assets; this calculation requires a quarterly determination of the CFC's passive assets and total assets.

House bill

The House bill repeals section 956A.

Effective date.—The provision applies to taxable years of U.S. shareholders beginning after September 30, 1995, and taxable years of foreign corporations ending with or within such taxable years of U.S. shareholders.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

C. OTHER FOREIGN PROVISIONS

1. EXCHANGE RATE USED IN TRANSLATING FOREIGN TAXES (SEC. 14421 OF THE HOUSE BILL)

Present law

Translation of certain accrued foreign taxes

Foreign income taxes paid in foreign currencies are required to be translated into U.S. dollar amounts using the exchange rate as of the time such taxes are paid to the foreign country or U.S. possession (sec. 986(a)(1)). This rule applies to foreign taxes paid directly by U.S. taxpayers, which taxes are creditable only in the year paid or accrued (or during a carryover period), and to foreign taxes paid by foreign corporations that are deemed paid by a U.S.

corporation, and hence creditable, in the year that the U.S. corporation receives a dividend or has an income inclusion.

Redetermination of foreign taxes

For taxpayers who utilize the accrual basis of accounting for determining creditable foreign taxes, accrued and unpaid foreign tax liabilities denominated in foreign currencies are translated into U.S. dollar amounts at the exchange rate as of the last day of the taxable year of accrual.[107] In certain cases where a difference exists between the dollar value of accrued foreign taxes and the dollar value of those taxes when paid, a redetermination (or adjustment) of foreign taxes is required.[108] Generally, such an adjustment may be attributable to one of three causes: (1) a refund of foreign taxes, (2) a difference between the amount of foreign currency units actually paid and the amount of foreign currency units accrued, and (3) fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

A redetermination of foreign tax paid or accrued directly by a U.S. person requires notification of the Internal Revenue Service and a redetermination of U.S. tax liability for the taxable year for which the foreign tax was claimed as a credit. Exceptions to this rule apply for de minimis amounts of foreign tax redetermination.[109] In the case of a redetermination of foreign taxes that qualify for the indirect foreign tax credit under sections 902 and 960, taxpayers generally are required to make appropriate adjustments to the relevant pools of earnings and profits and foreign taxes.[110]

House bill

In general

The House bill sets forth two sets of operating rules for the translation of foreign taxes. The first set establishes new rules for the translation of certain accrued foreign taxes. The other set modifies the rules of present law for translating all other foreign taxes.

Translation of foreign taxes

Translation of certain accrued foreign taxes

The House bill permits taxpayers who utilize the accrual basis of accounting for determining creditable foreign taxes to translate their foreign taxes at the average exchange rate for the taxable year to which such taxes relate, provided such taxes are actually paid no later than the date that is 2 years after the close of the year to which such taxes relate. This rule does not apply (1) with respect to taxes of an accrual-basis taxpayer that are actually paid in a taxable year prior to the year to which they relate, or (2) to tax payments that are denominated in a hyperinflationary currency (as defined in Treas. Reg. Sec. 1.985–1(b)(2)(D)(ii)). In addition, as discussed in detail below, this set of rules does not apply to, and thus a redetermination of foreign tax is required for, any foreign

[107] Temp. Treas. Reg. sec. 1.905–3T(b)(1).
[108] Temp. Treas. Reg. sec. 1.905–3T(c).
[109] Temp. Treas. Reg. sec. 1.905–3T(d)(1).
[110] Temp. Treas. Reg. sec. 1.905–3T(d)(2); Notice 90–26, 1990–1 C.B. 336.

income tax paid after the date two years after the close of the taxable year to which such taxes relate.

For example, assume that in year 1 a taxpayer accrues 1,000 units of foreign tax that relate to year 1. Further assume that as of the end of year 1 the tax is unpaid and the currency involved is not hyperinflationary. In this case, the House bill provides that the taxpayer would translate 1,000 units of accrued foreign tax into U.S. dollars at the average exchange rate for year 1.[111] If the 1,000 units of tax were paid by the taxpayer in either year 2 or year 3, no redetermination of foreign tax would be required. If, any portion of the tax so accrued remained unpaid as of the end of year 3, however, the taxpayer would be required to redetermine its foreign tax accrued in year 1 to account for the accrued but unpaid tax.

As another example, assume a taxpayer accrues 1,000 units of foreign tax in year 2, but pays the tax in year 1. Also assume that the tax relates to year 2. In this case, the taxpayer would translate the tax using the exchange rate as of the time the tax is paid (i.e., using the applicable year 1 exchange rate) since the tax is paid in a year prior to the year to which it relates.

As an illustration of what is meant by the taxable year to which taxes relate, assume that a foreign corporation is charged by a foreign government with an income tax of 100 units for 1996. Assume that the currency involved is not hyperinflationary. Due to a contest between the foreign government and the corporation that ends in 1996, the 100 units of tax are not paid until 1997. Assume that under the U.S. rules governing accrual, the foreign tax accrues for 1996 but does not do so until 1997.[112] Under the House bill, the taxes would be translated at the rate in effect for 1996, because the taxes relate to 1996, even though they did not accrue until 1997. If instead the contest was over in 1999 and the taxes were accrued and paid at that time, the translation rate used would be that of 1999, rather than 1996, because 1999 is more than 2 years after the end of 1996. Now assume that the contest was over in 2001, but the taxes were deposited in 1997 and not accrued until 2001. These taxes are paid before the beginning of the year in which the taxes were accrued (2001), but after the year to which the taxes relate (1996). In this case, under the House bill, the taxes would be translated at the rate for the year (1996) to which the taxes relate. If the taxes are instead paid in 1999, they would be translated at the relevant rate for 1999 because 1999 is more than 2 years after the end of 1996.

As an additional illustration of what is meant under the House bill as the taxable year to which taxes relate, assume that a foreign corporation accrues a foreign income tax of 100 units of non-hyperinflationary currency for 1996. Further assume that the actual amount of foreign tax liability of the foreign corporation for 1996 is 110 units, all of which is paid in 1997. Under the House bill, the 110 units of foreign tax are translated at the rate in effect for 1996 because the taxes relate to 1996, even though the total tax liability for that year was not actually accrued by the taxpayer in 1996.

[111] The same result would occur if the 1,000 units of tax were both accrued and paid in year 1.

[112] See, e.g., Rev. Rul. 84–125, 1984–2 C.B. 125.

Finally, assume that under foreign law, a foreign income tax liability accrues in 2001 under a long-term contract method of accounting, but advance deposits of that liability accruing in 2001 are made in each of the years 1997 through 2000. Under the House bill, it is intended that if the payments in 1997 through 2000 are treated as relating to 2001, these payments are nevertheless to be translated at the relevant rates for 1997 through 2000. Although the House bill provides a rule for translation of the taxes in this case, no change is intended as to the application of present law accounting rules for determining the year for which the taxes are eligible for credit or deduction for U.S. income tax purposes.

Translation of all other foreign taxes

Foreign taxes not eligible for application of the preceding rules generally are translated into U.S. dollars using the exchange rates as of the time such taxes are paid. The House bill grants the Secretary of the Treasury authority to issue regulations that would allow foreign tax payments made by a foreign corporation or by a foreign branch of a U.S. person to be translated into U.S. dollar amounts using an average U.S. dollar exchange rate for a specified period. It is anticipated that the applicable average exchange rate would be the rate as published by a qualified source of exchange rate information for the period during which the tax payments were made.

Redetermination of foreign taxes

As revised by the House bill, section 905(c) of the Code defines a foreign tax redetermination to include: (1) a refund of foreign taxes, (2) a difference between accrued taxes when paid and the amounts claimed as credits by the taxpayer, and (3) accrued taxes not paid before the date two years after the close of the taxable year to which such taxes relate. Thus, for example, the House bill provides that if at the close of the second taxable year after the close of the taxable year to which an accrued tax relates, any portion of the tax so accrued has not yet been paid, a foreign tax redetermination under section 905(c) is required for the amount representing the unpaid portion of that accrued tax. That is, the accrual of any tax that is unpaid as of that date would be retroactively denied. In cases where a redetermination is required, as under present law, the House bill specifies that the taxpayer must notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

The House bill provides that in the case of accrued taxes not paid within the date two years after the close of the taxable year to which such taxes relate, whether or not such taxes were previously accrued, any such taxes if subsequently paid are taken into account for the taxable year in which paid, and no redetermination with respect to the original year of accrual is required on account of such payment. In such a case, those taxes would be translated into U.S. dollar amounts using the exchange rates in effect for the period during which such taxes are paid. Nothing in the House bill is intended to change present law as to the length of time after the year to which the redetermination relates within which redetermination may be made or required.[113]

Effective date

The provision is effective for taxes paid (in the case of taxpayers using the cash basis for determining the foreign tax credit) or accrued (in the case of taxpayers using the accrual basis for determining the foreign tax credit) in taxable years beginning after December 31, 1995.

With respect to taxes of an accrual-basis taxpayer that relate to a taxable year beginning before January 1, 1996, the return for which (if one were due) would not yet be due on date of enactment of the House bill (taking into account extensions of time to file), it is contemplated that the Secretary would, in appropriate circumstances, provide taxpayers with a reasonable average-rate method for translating such taxes that are not paid until after the effective date of the House bill.

The House bill's changes to the foreign tax redetermination rules apply to taxes which relate to taxable years beginning after December 31, 1995. Thus, for example, the redetermination rules under the House bill do not apply to a foreign tax that relates to a taxable year beginning in or before 1995, even though the tax does not properly accrue until a taxable year beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. ELECTION TO USE SIMPLIFIED FOREIGN TAX CREDIT LIMITATION UNDER THE ALTERNATIVE MINIMUM TAX (SEC. 14422 OF THE HOUSE BILL)

Present law

Foreign tax credit limitations must be computed both for regular tax purposes and alternative minimum tax (AMT) purposes. Each foreign tax credit limitation computation requires the allocation and apportionment of deductions between foreign source income and U.S. source income.

House bill

The House bill permits taxpayers to elect to use as their AMT foreign tax credit limitation fraction the ratio of foreign source *regular* taxable income to entire alternative minimum taxable income, rather than the ratio of foreign source *alternative minimum* taxable income to entire alternative minimum taxable income. Foreign source *regular* taxable income is used only to the extent it does not exceed entire alternative minimum taxable income.

[113] See section 6501(c)(5). See also, e.g., *Pacific Metals Corp.* v. *Commissioner*, 1 T.C. 1028 (1943); *Texas Co. (Caribbean) Ltd.* v. *Commissioner*, 12 T.C. 925 (1949).

The election must be made for the first taxable year beginning after December 31, 1995, for which the taxpayer claims an AMT foreign tax credit. It is intended that a taxpayer be treated, for this purpose, as claiming an AMT foreign tax credit for any taxable year for which the taxpayer chooses to have the benefits of the foreign tax credit and in which the taxpayer is subject to the alternative minimum tax or would be subject to the alternative minimum tax but for the availability of the AMT foreign tax credit. Once made, the election applies to all subsequent taxable years, and may be revoked only with consent.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

3. TREATMENT OF INBOUND AND OUTBOUND TRANSFERS (SECS. 14423–14424 OF THE HOUSE BILL)

Present law

Outbound transfers

If a U.S. person transfers property to a foreign corporation in connection with certain corporate organizations, reorganizations, or liquidations, the foreign corporation will not, for purposes of determining the extent to which gain is recognized on such transfer, be considered to be a corporation (sec. 367(a)(1)). Various exceptions to the operation of this rule are provided, including a broad grant of authority to provide exceptions by regulation. Because corporate status is essential to qualify for the tax-free organization, reorganization, and liquidation provisions, failure to satisfy the requirements of section 367 could result in the recognition of gain to the participant corporations and shareholders.

An excise tax is imposed on outbound transfers that might not constitute income tax recognition events even after imposition of the anti-avoidance income tax rule adopted for corporate transactions. The excise tax generally applies on transfers of property by a U.S. person to a foreign corporation—as paid-in surplus or as a contribution to capital—or to a foreign estate, trust, or partnership.[114] The tax is 35 percent of the amount of gain inherent in the property transferred, but not recognized for income tax purposes at the time of the transfer (sec. 1491). For income tax purposes, the basis of the appreciated property whose transfer triggers the tax is not increased to account for imposition of the tax.

[114] The Internal Revenue Service has in the past wavered on the question whether this tax applies to a transfer to a foreign trust with respect to which the transferor is treated as the owner under the grantor trust rules. Compare Rev. Rul. 69–450, 1969–2 C.B. 168 (holding that such a transfer is subject to tax under section 1491); with Rev. Rul. 87–61, 1987–2 C.B. 219 (revoking Rev. Rul. 69–450, and holding that such a transfer is *not* subject to tax under section 1491).

The excise tax does not apply in certain cases where the transferee is exempt from U.S. tax under Code sections 501–505 (sec. 1492(1)). In addition, the excise tax does not apply in some cases where income tax rules governing outbound transfers apply, either by their terms or by the election of the taxpayer. Thus, the excise tax does not apply to a transfer described in section 367, or to a transfer not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles similar to the principles of section 367 (sec. 1492(2)).

In addition, a taxpayer may elect (under regulations prescribed by the Secretary) to treat a transfer described in section 1491 as a sale or exchange of the property transferred and to recognize as gain (but not loss) in the year of the transfer the excess of the fair market value of the property transferred over the adjusted basis (for determining gain) of the property in the hands of the transferor (sec. 1057). To the extent that gain is recognized pursuant to the election in the year of the transfer, the transfer is not subject to the excise tax, and the basis of the property in the hands of the transferee will be increased by the amount of gain recognized (sec. 1492(3)). The legislative history of the elective income recognition provision indicates that the making of an election which has as one of its principle purposes the avoidance of Federal income taxes is not permitted.[115]

The excise tax is due at the time of the transfer (sec. 1494(a)). Under regulations, the excise tax may be abated, remitted, or refunded if the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367 (sec. 1494(b)).

Inbound transfers

Section 367(b) provides, in part, that in the case of certain exchanges in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation will be considered to be a corporation except to the extent provided in regulations which are necessary or appropriate to prevent the avoidance of Federal income taxes.

Although it is clear that absence of a toll charge on accumulated earnings of a foreign corporation upon liquidation or reorganization into a U.S. corporation leads to avoidance of tax, and Congress in 1976 noted without disapproval the adoption of IRS positions that would prevent the avoidance of tax in these cases,[116] neither section 367(b) as revised in 1976, nor its predecessors, were drafted in such a way that directly causes tax to be imposed on foreign earnings.

For example, assume that a U.S. corporation owns 100 percent of the stock of a liquidating foreign corporation, and, pursuant to regulations under section 367(b), the foreign corporation is not treated as a corporation for purposes of section 332. In that case, the U.S. corporation would be required under the Code to recognize the difference between the basis and the value of its stock in the foreign corporation. That gain, however, may be more or less than the accumulated earnings of the foreign corporation attributable to

[115] Staff on the Joint Committee on Taxation, 94th Cong., 2d Sess., *General Explanation of the Tax Reform Act of 1976*, at 226 (1976).
[116] E.g., *id.* at 264.

the period when the U.S. corporation owned the stock of the foreign corporation.

Perhaps as a result, neither the present temporary regulations nor the proposed regulations under section 367(b) mandate a tax based on the accumulated earnings of a foreign corporation that liquidates or reorganizes into a U.S. corporation. The temporary regulations allow the taxpayer to elect treatment of the foreign corporation as a corporation if the tax on earnings is paid. If the taxpayer chooses not to make the election, the foreign corporation is not treated as a corporation under the relevant nonrecognition provision (e.g., sec. 332, 354), but is treated as a corporation for other purposes, such as for purposes of the basis rules (secs. 334, 358, 362), and carryover provisions (sec. 381) (Temp. Treas. Reg. secs. 7.367(b)–5(b) and 7.367(b)–7(c)(2)). The proposed regulations generally require that the foreign corporation be treated as a corporation, and permit the taxpayer to elect either to pay the tax on earnings, or to pay tax on the gain; but if the latter option is chosen, adjustments must be made to either net operating loss carryovers, capital loss carryovers, or asset bases (Proposed Treas. Reg. sec. 1.367(b)–3(b)(2)).

House bill

Outbound transfers

The House bill repeals the excise tax on outbound transfers. In its place, the House bill requires the full recognition of gain on a transfer of property by a U.S. person to a foreign corporation as either paid-in surplus or a contribution to capital, or to a foreign estate, trust, or partnership. Under the House bill, the Secretary of the Treasury may, however, provide regulations under which principles similar to the principles of section 367 would apply to any such transfer in lieu of the application of the full recognition rule. Moreover, the Secretary may provide rules under which recognition of gain would not be triggered by section 1491 in cases where the Secretary is satisfied that application of other Code rules (such as those relating to partnerships or trusts) would prevent the avoidance of tax consistent with the purposes of the bill. Full recognition of gain is also avoided in the case of a transfer described in section 367. It is anticipated that, prior to the promulgation of regulations, the Secretary generally will continue to permit taxpayers to elect the application of principles similar to the principles of section 367, provided the election is made by the time for filing the income tax return for the taxable year of the transfer.

Inbound transfers

The House bill provides that in the case of certain corporate organizations, reorganizations, and liquidations described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a condition for nonrecognition by a party to the transaction, income is recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This provision is limited in its application, under the House bill, so as not to apply to a transaction in which the foreign corporation is not treated as a corporation under section 367(a)(1). Thus, the House bill permits the Secretary to provide by regulations for recognition of income, without regard to the amount of gain that would be recognized in the absence of the relevant nonrecognition provision listed above. As under current law, such regulations will be subject to normal court review as to whether they are necessary or appropriate for the prevention of avoidance of Federal income taxes.

In addition, the House bill clarifies that rules for income recognition under section 367(b) may also be applied in a case involving a transfer literally described in section 367(a)(1), where necessary or appropriate to prevent the avoidance of Federal income taxes.

Effective date

The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not contain the House bill provision.

4. MODIFICATION OF REPORTING THRESHOLD FOR STOCK OWNERSHIP OF A FOREIGN CORPORATION (SEC. 14425 OF THE HOUSE BILL)

Present law

Section 6046 mandates the filing of information returns on behalf of a foreign corporation by certain U.S. persons upon the occurrence of certain events. U.S. persons required to file these information returns include those who own or acquire 5 percent or more of the value of the stock of a foreign corporation.

House bill

The House bill increases the reporting threshold for stock ownership of a foreign corporation under section 6046 from 5 percent (based on value) to 10 percent (based on vote or value).

Effective date.—The provision is effective for reportable transactions occurring after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

5. APPLICATION OF UNIFORM CAPITALIZATION RULES TO FOREIGN PERSONS (SEC. 14426 OF THE HOUSE BILL)

Present law

The uniform capitalization rules, which require certain direct and indirect costs allocable to property to be capitalized or included in inventory, generally apply in computing taxable income and earnings and profits of domestic and foreign taxpayers.

House bill

The House bill reduces the number of foreign corporations that are required to apply the uniform capitalization rules under section 263A. Under the House bill, a foreign corporation is subject to the uniform capitalization rules only with respect to the determination of (1) its tax liability with respect to its U.S. trade or business and (2) the tax liability of its U.S. shareholders under the subpart F provisions of the Code. However, it is intended that a foreign corporation that is not required to apply the uniform capitalization rules, under the House bill may nevertheless continue to apply such rules.

Exemption from uniform capitalization rules under the House bill constitutes a change of the accounting method of the foreign corporation adopted with the consent of the Secretary of the Treasury. No section 481(a) adjustment will arise in connection with such change; instead, the "cut-off method" is applicable. Under the cut-off method, the value of the beginning inventory of an affected taxpayer includes amounts properly capitalized in a previous year under the uniform capitalization rules, and the taxpayer would not apply the uniform capitalization rules with respect to inventory acquired or produced during the year for which the election is in effect.

Effective date.—The provision is effective for taxable years of the foreign corporation beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

6. PRIZES AND AWARDS RECEIVED BY A NONRESIDENT ALIEN RELATING TO AMATEUR SPORTS COMPETITIONS HELD IN THE UNITED STATES (SEC. 14427 OF HOUSE BILL)

Present law

Amounts received by a nonresident alien as prizes or awards associated with athletic competitions held in the United States are generally treated as services income subject to U.S. income tax. A limited exception is available for U.S. source compensation income not exceeding $3,000 if certain criteria are satisfied.

House bill

The House bill treats prizes and awards received by a nonresident alien with respect to his or her participation in an amateur sports competition held within the United States as foreign source income if the recipient does not perform any services for the prize or award. Thus, the value of the prize or award would be exempt from U.S. income tax. For this purpose, "amateur sports competition" means any competition in which the only prizes awarded by the sponsors are of nominal value. It is intended that medals that are awarded in athletic competitions and that contain small amounts of precious or semi-precious metals, such as Olympic medals, be considered to be of nominal value for purposes of this provision.

Effective date.—The provision is effective for prizes and awards received on or after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

7. TREATMENT FOR ESTATE TAX PURPOSES OF SHORT-TERM OBLIGATIONS HELD BY NONRESIDENT ALIENS (SEC. 14428 OF HOUSE BILL)

Present law

The United States imposes estate tax on assets of noncitizen nonresidents that are situated in the United States at the time of the individual's death. Special rules apply to treat certain bank deposits and debt instruments the income from which qualifies for the bank deposit interest exemption or the portfolio interest exemption as property from without the United States so that these items are excluded from the U.S. gross estate of a nonresident not a citizen of the United States. However, no equivalent exemption is available from the U.S. estate tax for obligations held by a noncitizen nonresident that generate short-term original issue discount ("OID") despite the fact that such income also is exempt from U.S. income tax in the hands of the nonresident recipient.

House bill

The House bill treats any debt obligation the income from which would be eligible for the exemption for short-term OID obligations under section 871(g)(1)(B)(I) held by a decedent on the date of his or her death as property situated outside of the United States in determining the U.S. estate tax liability of a nonresident not a U.S. citizen. However, a short-term OID obligation the income from which is effectively connected with a U.S. trade or business conducted by the decedent is not subject to this rule.

Effective date.—The provision is effective for estates of decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

XV. OTHER INCOME TAX SIMPLIFICATION PROVISIONS

A. PROVISIONS RELATING TO S CORPORATIONS

1. S CORPORATIONS PERMITTED TO HAVE 75 SHAREHOLDERS (SEC. 14501 OF THE HOUSE BILL)

Present law

The taxable income or loss of an S corporation is taken into account by the corporation's shareholders, rather than by the entity, whether or not such income is distributed. A small business corporation may elect to be treated as an S corporation. A "small business corporation" is defined as a domestic corporation which is not an ineligible corporation and which does not have (1) more than 35 shareholders, (2) as a shareholder, a person (other than certain trusts or estates) who is not an individual, (3) a nonresident alien as a shareholder, and (4) more than one class of stock. For purposes of the 35-shareholder limitation, a husband and wife are treated as one shareholder.

House bill

The House bill increases maximum number of eligible shareholders from 35 to 75.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. ELECTING SMALL BUSINESS TRUSTS (SEC. 14502 OF THE HOUSE BILL)

Present law

Under present law, trusts other than grantor trusts, voting trusts, certain testamentary trusts and "qualified subchapter S trusts" may not be shareholders in an S corporation. A "qualified subchapter S trust" is a trust which, under its terms, (1) is required to have only one current income beneficiary (for life), (2) any corpus distributed during the life of the beneficiary must be distributed to the beneficiary, (3) the beneficiary's income interest must terminate at the earlier of the beneficiary's death or the termination of the trust, and (4) if the trust terminates during the beneficiary's life, the trust assets must be distributed to the beneficiary. All the income (as defined for local law purposes) must be currently distributed to that beneficiary. The beneficiary is treated as the owner of the portion of the trust consisting of the stock in the S corporation.

House bill

In general

The House bill allows stock in an S corporation to be held by certain trusts ("electing small business trusts"). In order to qualify for this treatment, all beneficiaries of the trust must be individuals or estates eligible to be S corporation shareholders, except that charitable organizations may hold contingent remainder interests. No interest in the trust may be acquired by purchase. For this purpose, "purchase" means any acquisition of property with a cost basis (determined under sec. 1012). Thus, interests in the trust must be acquired by reason of gift, bequest, etc. A trust must elect to be treated as an electing small business trust.

Each potential current beneficiary of the trust is counted as a shareholder for purposes of the proposed 75 shareholder limitation (or if there were no potential current beneficiaries, the trust would be treated as the shareholder). A potential current income beneficiary means any person, with respect to the applicable period, who is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust.

Treatment of items relating to S corporation stock

The portion of the trust which consists of stock in one or more S corporations is treated as a separate trust for purposes of computing the income tax attributable to the S corporation stock held by the trust. The trust is taxed at the highest individual rate (currently, 39.6 percent on ordinary income and 28 percent on net capital gain) on this portion of the trust's income. The taxable income attributable to this portion includes (1) the items of income, loss, or deduction allocated to it as an S corporation shareholder under the rules of subchapter S, (2) gain or loss from the sale of the S corporation stock, and (3) to the extent provided in regulations, any state or local income taxes and administrative expenses of the trust properly allocable to the S corporation stock. Otherwise allowable capital losses are allowed only to the extent of capital gains.

In computing the trust's income tax on this portion of the trust, no deduction is allowed for amounts distributed to beneficiaries, and no deduction or credit is allowed for any item other than the items described above. This income is not included in the distributable net income of the trust, and thus is not included in the beneficiaries' income. No item relating to the S corporation stock could be apportioned to any beneficiary.

On the termination of all or any portion of an electing small business trust the loss carryovers or excess deductions referred to in section 642(h) is taken into account by the entire trust, subject to the usual rules on termination of the entire trust.

Treatment of remainder of items held by trust

In determining the tax liability with regard to the remaining portion of the trust, the items taken into account by the subchapter S portion of the trust are disregarded. Although distributions from the trust are deductible in computing the taxable income on this portion of the trust, under the usual rules of subchapter J, the trust's distributable net income does not include any income attributable to the S corporation stock.

Termination of trust and conforming amendment applicable to all trusts

Where the trust terminates before the end of the S corporation's taxable year, the trust takes into account its pro rata share of S corporation items for its final year. The bill makes a conforming amendment applicable to all trusts and estates clarifying that this is the present-law treatment of trusts and estates that terminate before the end of the S corporation's taxable year.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. EXPANSION OF POST-DEATH QUALIFICATION FOR CERTAIN TRUSTS (SEC. 14503 OF THE HOUSE)

Present law

Under present law, trusts other than grantor trusts, voting trusts, certain testamentary trusts and "qualified subchapter S trusts" may not be shareholders in an S corporation. A grantor trust may remain an S corporation shareholder for 60 days after the death of the grantor. The 60-day period is extended to two years if the entire corpus of the trust is includible in the gross estate of the deemed owner. In addition, a trust may be an S corporation shareholder for 60 days after the transfer of S corporation pursuant to a will.

House bill

The House bill expands the post-death holding period to two years for all testamentary trusts.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. FINANCIAL INSTITUTIONS PERMITTED TO HOLD SAFE HARBOR DEBT (SEC. 14504 OF THE HOUSE BILL)

Present law

A small business corporation eligible to be an S corporation may not have more than one class of stock. Certain debt ("straight debt") is not treated as a second class of stock so long as such debt is an unconditional promise to pay on demand or on a specified date a sum certain in money if: (1) the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion, or similar factors; (2) there is no convertibility (directly or indirectly) into stock, and (3) the creditor is an individual (other than a nonresident alien), an estate, or certain qualified trusts.

House bill

The definition of “straight debt” is expanded to include debt held by creditors, other than individuals, that are actively and regularly engaged in the business of lending money.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. RULES RELATING TO INADVERTENT TERMINATIONS AND INVALID ELECTIONS (SEC. 14505 OF THE HOUSE BILL)

Present law

Under present law, if the Internal Revenue Service (“IRS”) determines that a corporation’s Subchapter S election is inadvertently terminated, the IRS can waive the effect of the terminating event for any period if the corporation timely corrects the event and if the corporation and shareholders agree to be treated as if the election had been in effect for that period. Such waivers generally are obtained through the issuance of a private letter ruling. Present law does not grant the IRS the ability to waive the effect of an inadvertent invalid Subchapter S election.

In addition, under present law, a small business corporation must elect to be an S corporation no later than the 15th day of the third month of the taxable year for which the election is effective. The IRS may not validate a late election.

House bill

Under the House bill, the authority of the IRS to waive the effect of an inadvertent termination is extended to allow the Service to waive the effect of an invalid election caused by an inadvertent failure to qualify as a small business corporation or to obtain the required shareholder consents (including elections regarding qualified subchapter S trusts), or both. The House bill also allows the IRS to treat a late Subchapter S election as timely where the Service determines that there was reasonable cause for the failure to make the election timely. It is intended that the IRS be reasonable in exercising this authority and apply standards that are similar to those applied under present law to inadvertent subchapter S terminations and other late or invalid elections.

Effective date.—The provision applies to taxable years beginning after December 31, 1982.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. The conferees wish to clarify that the IRS may exercise its authority to treat a late election as timely in cases where the taxpayer never filed an election and the Service determines that there was reasonable cause for the failure to make the election.

6. AGREEMENT TO TERMINATE YEAR (SEC. 14506 OF THE HOUSE BILL)

Present law

In general, each item of S corporation income, deduction and loss is allocated to shareholders on a per-share, per-day basis. However, if any shareholder terminates his or her interest in an S corporation during a taxable year, the S corporation, with the consent of all its shareholders, may elect to allocate S corporation items by closing its books as of the date of such termination rather than apply the per-share, per-day rule.

House bill

The House bill provides that, under regulations to be prescribed by the Secretary of the Treasury, the election to close the books of the S corporation upon the termination of a shareholder's interest is made by all affected shareholders and the corporation, rather than by all shareholders. The closing of the books applies only to the affected shareholders. For this purpose, "affected shareholders" means any shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the year. If a shareholder transferred shares to the corporation, "affected shareholders" includes all persons who were shareholders during the year.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

7. EXPANSION OF POST-TERMINATION TRANSITION PERIOD (SEC. 14507 OF THE HOUSE BILL)

Present law

Distributions made by a former S corporation during its post-termination period are treated in the same manner as if the distributions were made by an S corporation (e.g., treated by shareholders as nontaxable distributions to the extent of the accumulated adjustment account). Distributions made after the post-termination period are generally treated as made by a C corporation (i.e., treated by shareholders as taxable dividends to the extent of earnings and profits).

The "post-termination period" is the period beginning on the day after the last day of the last taxable year of the S corporation and ending on the later of: (1) a date that is one year later, or (2) the due date for filing the return for the last taxable year and the 120-day period beginning on the date of a determination that the corporation's S corporation election had terminated for a previous taxable year.

In addition, the audit procedures adopted by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") with respect to partnerships also apply to S corporations. Thus, the tax treatment of items is determined at the corporate, rather than individual level.

House bill

The present-law definition of post-termination period is expanded to include the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer that follows the termination of the S corporation's election and that adjusts a subchapter S item of income, loss or deduction of the S corporation during the S period. In addition, the definition of "determination" is expanded to include a final disposition of the Secretary of the Treasury of a claim for refund and, under regulations, certain agreements between the Secretary and any person, relating to the tax liability of the person.

In addition, the House bill repeals the TEFRA audit provisions applicable to S corporations and would provide other rules to require consistency between the returns of the S corporation and its shareholders.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

8. S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES (SEC. 14508 OF THE HOUSE BILL)

Present law

A small business corporation may not be a member of an affiliated group of corporations (other than by reason of ownership in certain inactive corporations). Thus, an S corporation may not own 80 percent or more of the stock of another corporation (whether an S corporation or a C corporation).

In addition, a small business corporation may not have as a shareholder another corporation (whether an S corporation or a C corporation).

House bill

An S corporation is allowed to own 80 percent or more of the stock of a C corporation. The C corporation subsidiary could elect to join in the filing of a consolidated return with its affiliated C corporations. An S corporation is not allowed to join in such election. Dividends received by an S corporation from a C corporation in which the S corporation has an 80 percent or greater ownership stake is not treated as passive investment income for purposes of sections 1362 and 1375 to the extent the dividends are attributable to the earnings and profits of the C corporation derived from the active conduct of a trade or business.

In addition, an S corporation is allowed to own a qualified subchapter S subsidiary. The term "qualified subchapter S subsidiary" means a domestic corporation that is not an ineligible corporation (i.e., a corporation that would be eligible to be an S corporation if the stock of the corporation were held directly by the shareholders of its parent S corporation) if (1) 100 percent of the stock of the subsidiary were held by its S corporation parent and (2) for which the parent elects to treat as a qualified subchapter S subsidiary. Under the election, the qualified subchapter S subsidiary is not treated as a separate corporation and all the assets, liabilities, and items of income, deduction, and credit of the subsidiary are treated as the assets, liabilities, and items of income, deduction, and credit of the parent S corporation.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

9. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS (SEC. 14509 OF THE HOUSE BILL)

Present law

Under present law, the amount of loss an S corporation shareholder may take into account for a taxable year cannot exceed the sum of the shareholder's adjusted basis in his or her stock of the corporation and the adjusted basis in any indebtedness of the corporation to the shareholder. Any excess loss is carried forward.

Any distribution to a shareholder by an S corporation generally is tax-free to the shareholder to the extent of the shareholder's adjusted basis of his or her stock. The shareholder's adjusted basis is reduced by the tax-free amount of the distribution. Any distribution in excess of the shareholder's adjusted basis is treated as gain from the sale or exchange of property.

Under present law, income (whether or not taxable) and expenses (whether or not deductible) serve, respectively, to increase and decrease an S corporation shareholder's basis in the stock of the corporation. These rules require that the adjustments to basis for items of both income and loss for any taxable year apply before the adjustment for distributions applies.

These rules limiting losses and allowing tax-free distributions up to the amount of the shareholder's adjusted basis are similar in certain respects to the rules governing the treatment of losses and cash distributions by partnerships. Under the partnership rules (unlike the S corporation rules), for any taxable year, a partner's basis is first increased by items of income, then decreased by distributions, and finally is decreased by losses for that year.

In addition, if the S corporation has accumulated earnings and profits, any distribution in excess of the amount in an "accumulated adjustments account" will be treated as a dividend (to the extent of the accumulated earnings and profits). A dividend distribution does not reduce the adjusted basis of the shareholder's stock. The "accumulated adjustments account" generally is the amount of the accumulated undistributed post-1982 gross income less deductions.

House bill

The House bill provides that the adjustments for distributions made by an S corporation during a taxable year are taken into account before applying the loss limitation for the year. Thus, distributions during a year reduce the adjusted basis for purposes of determining the allowable loss for the year, but the loss for a year does not reduce the adjusted basis for purposes of determining the tax status of the distributions made during that year.

The House bill also provides that in determining the amount in the accumulated adjustment account for purposes of determining the tax treatment of distributions made during a taxable year by an S corporation having accumulated earnings and profits, net negative adjustments (i.e., the excess of losses and deductions over income) for that taxable year are disregarded.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

10. TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C (SEC. 14510 OF THE HOUSE BILL)

Present law

Present law contains several provisions relating to the treatment of S corporations as corporations generally for purposes of the Internal Revenue Code.

First, under present law, the taxable income of an S corporation is computed in the same manner as in the case of an individual (sec. 1363(b)). Under this rule, the provisions of the Code governing the computation of taxable income which are applicable only to corporations, such as the dividends received deduction, do not apply to S corporations.

Second, except as otherwise provided by the Internal Revenue Code and except to the extent inconsistent with subchapter S, subchapter C (i.e., the rules relating to corporate distributions and adjustments) applies to an S corporation and its shareholders (sec. 1371(a)(1)). Under this second rule, provisions such as the corporate reorganization provisions apply to S corporations. Thus, a C corporation may merge into an S corporation tax-free.

Finally, an S corporation in its capacity as a shareholder of another corporation is treated as an individual for purposes of subchapter C (sec. 1371(a)(2)). In 1988, the Internal Revenue Service took the position that this rule prevents the tax-free liquidation of a C corporation into an S corporation because a C corporation cannot liquidate tax-free when owned by an individual shareholder.[117] In 1992, the Internal Revenue Service reversed its position, stating that the prior ruling was incorrect.[118]

House bill

The House bill repeals the rule that treats an S corporation in its capacity as a shareholder of another corporation as an individual. Thus, the provision clarifies that the liquidation of a C corporation into an S corporation will be governed by the generally applicable subchapter C rules, including the provisions of sections 332 and 337 allowing the tax-free liquidation of a corporation into its parent corporation. Following a tax-free liquidation, the built-in gains of the liquidating corporation may later be subject to tax under section 1374 upon a subsequent disposition. An S corporation also will be eligible to make a section 338 election (assuming all the requirements are otherwise met), resulting in immediate recognition of all the acquired C corporation's gains and losses (and the resulting imposition of a tax).

The repeal of this rule does not change the general rule governing the computation of income of an S corporation. For example, it does not allow an S corporation, or its shareholders, to claim a dividends received deduction with respect to dividends received by the S corporation, or to treat any item of income or deduction in a manner inconsistent with the treatment accorded to individual taxpayers.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

11. ELIMINATION OF CERTAIN EARNINGS AND PROFITS (SEC. 14511 OF THE HOUSE BILL)

Present law

Under present law, the accumulated earnings and profits of a corporation are not increased for any year in which an election to be treated as an S corporation is in effect. However, under the subchapter S rules in effect before revision in 1982, a corporation electing subchapter S for a taxable year increased its accumulated earnings and profits if its earnings and profits for the year exceeded both its taxable income for the year and its distributions out of that year's earnings and profits. As a result of this rule, a shareholder may later be required to include in his or her income the accumulated earnings and profits when it is distributed by the corporation. The 1982 revision to subchapter S repealed this rule for earnings attributable to taxable years beginning after 1982 but did not do so for previously accumulated S corporation earnings and profits.

[117] PLR 8818049 (Feb. 10, 1988).
[118] PLR 9245004 (July 28, 1992).

House bill

The House bill provides that if a corporation is an S corporation for its first taxable year beginning after December 31, 1995, the accumulated earnings and profits of the corporation as of the beginning of that year is reduced by the accumulated earnings and profits (if any) accumulated in any taxable year beginning before January 1, 1983, for which the corporation was an electing small business corporation under subchapter S. Thus, such a corporation's accumulated earnings and profits are solely attributable to taxable years for which an S election was not in effect. This rule is generally consistent with the change adopted in 1982 limiting the S shareholder's taxable income attributable to S corporation earnings to his or her share of the taxable income of the S corporation.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

12. CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS UNDER THE AT-RISK RULES (SEC. 14512 OF THE HOUSE BILL)

Present law

Under section 1366, the amount of loss an S corporation shareholder may take into account cannot exceed the sum of the shareholder's adjusted basis in his or her stock of the corporation and the unadjusted basis in any indebtedness of the corporation to the shareholder. Any disallowed loss is carried forward to the next taxable year. Any loss that is disallowed for the last taxable year of the S corporation may be carried forward to the post-termination period. The "post-termination period" is the period beginning on the day after the last day of the last taxable year of the S corporation and ending on the later of: (1) a date that is one year later, or (2) the due date for filing the return for the last taxable year and the 120-day period beginning on the date of a determination that the corporation's S corporation election had terminated for a previous taxable year.

In addition, under section 465, a shareholder of an S corporation may not deduct losses that are flowed through from the corporation to the extent the shareholder is not "at-risk" with respect to the loss. Any loss not deductible in one taxable year because of the at-risk rules is carried forward to the next taxable year.

House bill

Losses of an S corporation that are suspended under the at-risk rules of section 465 are carried forward to the S corporation's post-termination period.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

13. ADJUSTMENTS TO BASIS OF INHERITED S STOCK TO REFLECT CERTAIN ITEMS OF INCOME (SEC. 14513 OF THE HOUSE BILL)

Present law

Income in respect to a decedent ("IRD") generally consists of items of gross income that accrued during the decedent's lifetime but were not includible in the decedent's income before his or her death under his or her method of accounting. IRD is includible in the income of the person acquiring the right to receive such item. A deduction for the estate tax attributable to an item of IRD is allowed to such person (sec. 691(c)). The cost or basis of property acquired from a decedent is its fair market value at the date of death (or alternate valuation date if that date is elected for estate tax purposes). This basis is often referred to as a "stepped-up basis." Property that constitutes a right to receive IRD does not receive a stepped-up basis.

The basis of a partnership interest or corporate stock acquired from a decedent generally is stepped-up at death. Under Treasury regulations, the basis of a partnership interest acquired from a decedent is reduced to the extent that its value is attributable to items constituting IRD (Treas. reg. sec. 1.742–1). This rule insures that the items of IRD held by a partnership are not later offset by a loss arising from a stepped-up basis. Although S corporation income is taxed to its shareholders in a manner similar to the taxation of a partnership and its partners, no comparable regulation requires a reduction in the basis of stock in an S corporation acquired from a decedent where the S corporation holds items of IRD.

House bill

The House bill provides that a person acquiring stock in an S corporation from a decedent would treat as IRD his or her pro rata share of any item of income of the corporation that would have been IRD if that item had been acquired directly from the decedent. Where an item is treated as IRD, a deduction for the estate tax attributable to the item generally will be allowed under the provisions of section 691(c). The stepped-up basis in the stock in an S corporation acquired from a decedent is reduced by the extent to which the value of the stock is attributable to items consisting of IRD. This basis rule is comparable to the present-law partnership rule.

Effective date.—The provision applies with respect to decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

14. S CORPORATIONS ELIGIBLE FOR RULES APPLICABLE TO REAL PROPERTY SUBDIVIDED FOR SALE BY NONCORPORATE TAXPAYERS (SEC. 14514 OF THE HOUSE BILL)

Present law

Under present-law section 1237, a lot or parcel of land held by a taxpayer *other than a corporation* generally is not treated as ordinary income property solely by reason of the land being subdivided if: (1) such parcel had not previously been held as ordinary income property and if in the year of sale, the taxpayer did not hold other real property; (2) no substantial improvement has been made on the land by the taxpayer, a related party, a lessee, or a government; and (3) the land has been held by the taxpayer for five years.

House bill

The House bill allows the present-law capital gains presumption in the case of land held by an S corporation. It is expected that rules similar to the attribution rules for partnerships will apply to S corporation (Treas. reg. sec. 1.1237–1(b)(3)).

Effective date.—The provision is effective for sales in taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

15. REELECTING SUBCHAPTER S STATUS (SEC. 14515 OF THE HOUSE BILL)

Present law

A small business corporation that terminates its subchapter S election (whether by revocation or otherwise) may not make another election to be an S corporation for five taxable years unless the Secretary of the Treasury consents to such election.

House bill

For purposes of the five-year rule, any termination of subchapter S status in effect immediately before the date of enactment of the proposal is not be taken into account. Thus, any small business corporation that had terminated its S corporation election within the five-year period before the date of enactment may reelect subchapter S status upon enactment of the bill without the consent of the Secretary of the Treasury.

Effective date.—The provision is effective upon the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

B. PROVISIONS RELATING TO REGULATED INVESTMENT COMPANIES ("RICS") AND REAL ESTATE INVESTMENT TRUSTS ("REITS")

1. REPEAL THE SHORT-SHORT TEST FOR REGULATED INVESTMENT COMPANIES (SEC. 14521 OF THE HOUSE BILL)

Present law

A regulated investment company ("RIC") generally is treated as a conduit for Federal income tax purposes.

Among other requirements, to be a RIC a corporation must derive less than 30 percent of its gross income from the sale or disposition of certain investments (including stock, securities, options, futures, and forward contracts) held less than three months (the "short-short test").

House bill

The House bill repeals the short-short test.

Effective date.—Taxable years ending after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. MODIFICATIONS OF RULES FOR REAL ESTATE INVESTMENT TRUSTS (SECS. 14531–14543 OF THE HOUSE BILL)

Present law

In general, a real estate investment trust ("REIT") is an entity that receives most of its income from passive real estate related investments and that receives conduit treatment for income that is distributed to shareholders.

Election to be treated as a REIT

A newly-electing entity generally cannot have earnings and profits accumulated from any year in which the entity was in existence and not treated as a real estate investment trust. To satisfy this requirement, the entity must distribute, during its first REIT taxable year, any earnings and profits that were accumulated in non-REIT years. For this purpose, distributions by the entity generally are treated as being made from the most recently accumulated earnings and profits.

Taxation of REITs

Capital gains.—A REIT that has a net capital gain for a taxable year generally is subject to tax on such capital gain under the capital gains tax regime generally applicable to corporations. However, a REIT may diminish or eliminate its tax liability attributable to such capital gain by paying a "capital gain dividend" to its shareholders. Shareholders who receive capital gain dividends treat the amount of such dividends as long-term capital gain regardless of their holding period of the stock.

Income from foreclosure property.—In addition to tax on its REIT taxable income, a REIT is subject to tax at the highest rate of tax paid by corporations on its net income from foreclosure property. Foreclosure property is any real property or personal property incident to such real property that is acquired by a REIT as a result of default or imminent default on a lease of such property or indebtedness secured by such property, provided that (unless acquired as foreclosure property), such property was not held by the REIT for sale to customers. A property generally may be treated as foreclosure property for a period of two years after the date the property is acquired by the REIT.

Income or loss from prohibited transactions.—A 100-percent tax is imposed on the net income of a REIT from "prohibited transactions." A prohibited transaction is the sale or other disposition of property described in section 1221(1) of the Code (property held for sale in the ordinary course of a trade or business) other than foreclosure property. A safe harbor is provided for certain sales that otherwise might be considered prohibited transactions. The safe harbor is limited to seven or fewer sales a year or, alternatively, any number of sales provided that the aggregate adjusted basis of the property sold does not exceed 10 percent of the aggregate basis of all the REIT's assets at the beginning of the REIT's taxable year.

Organizational structure requirements

To qualify as a REIT, an entity must be for its entire taxable year a corporation or an unincorporated trust or association that would be taxable as a domestic corporation but for the REIT provisions, and must be managed by one or more trustees. Except for the first taxable year for which an entity elects to be a REIT, the beneficial ownership of the entity must be held by 100 or more persons, and the entity may not be so closely held by individuals that it would be treated as a personal holding company. A REIT is disqualified for any year in which it does not comply with regulations to ascertain the actual ownership of the REIT's outstanding shares.

Income requirements

In general.—In order for an entity to qualify as a REIT, at least 95 percent of its gross income generally must be derived from certain passive sources (the "95-percent test"). In addition, at least 75 percent of its income generally must be from certain real estate sources (the "75-percent test"), including rents from real property.

In addition, less than 30 percent of the entity's gross income may be derived from gain from the sale or other disposition of stock or securities held for less than one year, real property held less than four years, and property that is sold or disposed of in a prohibited transaction.

Definition of rents.—For purposes of the income requirements, rents from real property generally include rents from interests in real property, charges for services customarily rendered or furnished in connection with the rental of real property, whether or not such charges are separately stated, and rent attributable to personal property that is leased under or in connection with a lease of real property, but only if the rent attributable to such personal property does not exceed 15 percent of the total rent for the year under the lease.

Hedging instruments.—Interest rate swaps or cap agreements that protect a REIT from interest rate fluctuations on variable rate debt incurred to acquire or carry real property are treated as securities under the 30-percent test and payments under these agreements are treated as qualifying under the 95-percent test.

Asset requirements

REIT subsidiaries.—A subsidiary of a REIT is a qualified REIT subsidiary if and only if 100 percent of the subsidiary's stock is owned by the REIT at all times that the subsidiary is in existence. If at any time the REIT ceases to own 100 percent of the stock of the subsidiary, or if the REIT ceases to qualify for (or revokes an election of) REIT status, such subsidiary is treated as a new corporation that acquired all of its assets in exchange for its stock (and assumption of liabilities) immediately before the time that the REIT ceased to own 100 percent of the subsidiary's stock, or ceased to be a REIT as the case may be.

Distribution requirements

To satisfy the distribution requirement, a REIT must distribute as dividends to its shareholders during the taxable year an amount equal to or exceeding (1) the sum of 95 percent of its REIT other than net capital gain income and 95 percent of the excess of its net income from foreclosure property over the tax imposed on that income minus (2) certain excess noncash income.

Excess noncash items include: (1) the excess of the amounts that the REIT is required to include in income under section 467 with respect to certain rental agreements involving deferred rents, over the amounts that the REIT otherwise would recognize under its regular method of accounting; (2) in the case of a REIT using the cash method of accounting, the excess of the amount of original issue discount and coupon interest that the REIT is required to take into account with respect to a loan to which section 1274 applies, over the amount of money and fair market value of other property received with respect to the loan; and (3) income arising from the disposition of a real estate asset in certain transactions that failed to qualify as like-kind exchanges under section 1031.

House bill

Election to be treated as a REIT

The House bill changes the ordering rule for purposes of the requirement that newly-electing REITs distribute earnings and profits that were accumulated in non-REIT years. Under the House bill, distributions of accumulated earnings and profits generally would be treated as made from the entity's earliest accumulated earnings and profits.

Taxation of REITs

Capital gains.—The House bill permits a REIT to elect to retain and pay income tax on net long-term capital gains it received during the tax year.

Income from foreclosure property.—The House bill lengthens the original grace period for foreclosure property until the last day of the third full taxable year following the election. The grace period also could be extended for an additional three years by filing a request to the IRS. Under the House bill, a REIT could revoke an election to treat property as foreclosure property for any taxable year by filing a revocation on or before its due date for filing its tax return.

The House bill conforms the definition of independent contractor for purposes of the foreclosure property rule to the definition of independent contractor for purposes of the general rules.

Income or loss from prohibited transactions.—The House bill excludes from the prohibited sales rules property that was involuntarily converted.

Organizational structure requirements

The House bill replaces the rule that disqualifies a REIT for any year in which the REIT failed to comply with regulations to ascertain its ownership, with an intermediate penalty for failing to do so. Under the House bill, the penalty is $25,000 ($50,000 for intentional violations) for any year in which the REIT did not comply with the ownership regulations.

In addition, a REIT that complied with the regulations for ascertaining its ownership, and which did not know, or have reason to know, that it was so closely held as to be classified as a personal holding company, is not to be treated as a personal holding company.

Income requirements

In general.—The House bill repeals the rule that requires less than 30 percent of a REIT's gross income be derived from gain from the sale or other disposition of stock or securities held for less than one year, certain real property held less than four years, and property that is sold or disposed of in a prohibited transaction.

Definition of rents.—The House bill permits a REIT to render a *de minimis* amount of impermissible services to tenants, or in connection with the management of property, and still treat amounts received with respect to that property as rent.

The House bill modifies the attribution to partnerships for purposes of defining rent, so that attribution would occur only when a partner owns a 25 percent or greater interest in the partnership.

Hedging instruments.—Under the House bill, income from all hedges that reduce the interest rate risk of REIT liabilities, not just from interest rate swaps and caps, is treated as qualifying under the 95-percent test.

Asset requirements

REIT subsidiaries.—The House bill permits any wholly-owned corporation of a REIT to be treated as a qualified subsidiary, regardless of whether the corporation had always been owned by the REIT. In addition, any pre-REIT earnings and profits of the subsidiary must be distributed before the end of the REIT's taxable year.

Distribution requirements

The House bill (1) expands the class of excess noncash items to include income from the cancellation of indebtedness and (2) extends the treatment of original issue discount and coupon interest as excess noncash items to REITs that use an accrual method of taxation.

Effective date.—Taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provisions.

C. ACCOUNTING PROVISIONS

1. MODIFICATIONS TO THE LOOK-BACK METHOD FOR LONG-TERM CONTRACTS (SEC. 14551 OF THE HOUSE BILL)

Present law

Taxpayers engaged in the production of property under a long-term contract generally must compute income from the contract under the percentage of completion method. Under the percentage of completion method, a taxpayer must include in gross income for any taxable year an amount that is based on the product of (1) the gross contract price and (2) the percentage of the contract completed as of the end of the year. The percentage of the contract completed as of the end of the year is determined by comparing costs incurred with respect to the contract as of the end of the year with estimated total contract costs.

Because the percentage of completion method relies upon estimated, rather than actual, contract price and costs to determine gross income for any taxable year, a "look-back method" is applied in the year a contract is completed in order to compensate the taxpayer (or the Internal Revenue Service) for the acceleration (or deferral) of taxes paid over the contract term. The first step of the look-back method is to reapply the percentage of completion method using actual contract price and costs rather than estimated contract price and costs. The second step generally requires the taxpayer to recompute its tax liability for each year of the contract using gross income as reallocated under the look-back method. If there is any difference between the recomputed tax liability and the tax liability as previously determined for a year, such difference is treated as a hypothetical underpayment or overpayment of tax to which the taxpayer applies a rate of interest equal to the overpayment rate, compounded daily. The taxpayer receives (or pays) interest if the net amount of interest applicable to hypothetical overpayments exceeds (or is less than) the amount of interest applicable to hypothetical underpayments. The look-back method must be reapplied for any item of income or cost that is properly taken into account after the completion of the contract.

House bill

The House bill provides that a taxpayer may elect not to apply the look-back method with respect to a long-term contract if for each prior contract year, the cumulative taxable income (or loss) under the contract as determined using estimated contract price and costs is within 10 percent of the cumulative taxable income (or loss) as determined using actual contract price and costs. The bill also provides that a taxpayer may elect not to reapply the look-back method with respect to a contract if, as of the close of any taxable year after the year the contract is completed, the cumulative taxable income (or loss) under the contract is within 10 percent of the cumulative look-back income (or loss) as of the close of the most recent year in which the look-back method was applied (or would have applied but for the other de minimis exception described above). Finally, the bill reduces the number of interest rates applicable under the look-back method.

Effective date.—The provision applies to contracts completed in taxable years ending after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. APPLICATION OF MARK-TO-MARKET ACCOUNTING METHOD TO TRADERS IN SECURITIES (SEC. 14552 OF THE HOUSE BILL)

Present law

A dealer in securities must compute its income pursuant to a "mark-to-market" method of accounting prescribed by section 475. Under section 475, any security that is inventory in the hands of a dealer must be included in inventory at its fair market value and any security that is that is not inventory in the hands of a dealer and that is held at year end shall be treated as sold for its fair market value. For this purpose, a "dealer in securities" is any person who (1) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

Traders in securities generally are taxpayers who derive their income principally from the active sale or exchange of securities on the market (rather than to customers, as in the case of a dealer in securities). Section 475 does not explicitly apply to traders in securities. In general, there are no specific statutory provisions that mandate the use of an overall method of accounting by traders. Thus, traders generally account for gains and losses on trading securities when the securities are sold, rather than marking the securities to market, for Federal income tax purposes.

House bill

The House bill provides that a trader in securities may, with the consent of the Secretary of the Treasury, elect to change its method of accounting to adopt a mark-to-market method for its trading activities. Such method may be based on the provisions of present-law section 475, modified to clearly reflect the income of the taxpayer. The adoption of a mark-to-market method of accounting may not change the character of the gain or loss with respect to the securities.

Effective date.—The provision is effective for taxable years ending on or after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. MODIFICATION OF RULING AMOUNTS FOR NUCLEAR DECOMMISSIONING COSTS (SEC. 14553 OF THE HOUSE BILL)

Present law

Under the economic performance rules, a deduction for accrual basis taxpayers generally is deferred until there is economic performance for the item for which the deduction is claimed (sec. 461(h)). Present law contains an exception to the economic performance rules under which a taxpayer responsible for nuclear power plant decommissioning may elect to deduct contributions made to a qualified nuclear decommissioning fund (sec. 468A).

A qualified decommissioning fund is a segregated fund established by the taxpayer that is used exclusively for the payment of decommissioning costs, taxes on fund income, payment of management costs of the fund, and investment in certain types of investments. Contributions to the fund are deductible in the year made to the extent that these amounts were collected as part of the cost of service to ratepayers. Withdrawals of funds by the taxpayer to pay for decommissioning expenses are included in income at that time, but the taxpayer also is entitled to a deduction at that time for decommissioning expenses as economic performance for those costs occurs. A 20-percent tax rate applies to the taxable income of the fund.

In order to prevent accumulations of funds over the remaining life of the plant in excess of those required to pay future decommissioning costs and to ensure that contributions to the funds are not deducted more rapidly than level funding, taxpayers are required to obtain a ruling from the IRS to establish the maximum contribution that may be made to the fund. Taxpayers are required to obtain subsequent rulings to reflect changes in the ruling amount in certain instances.

House bill

The House bill repeals the requirement that a taxpayer obtain certain rulings from the IRS in order to deduct contributions to a nuclear decommissioning fund. Under the House bill, a taxpayer is required to obtain an initial ruling to determine its maximum deduction for contributions to a fund, but is not required to obtain subsequent rulings if such amounts are not substantially modified.

The taxpayer is required to notify the Secretary of the Treasury whenever the ruling amount is modified.

Effective date.—The provision applies to modifications after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. ELECTION OF ALTERNATIVE TAXABLE YEARS BY PARTNERSHIPS AND S CORPORATIONS (SEC. 14554 OF THE HOUSE BILL)

Present law

The taxable income of a partnership or an S corporation (a "flow-thru entity") generally is reported by the partnership's partners or the corporation's shareholders (the "owners") in the taxable year within which the taxable year of the flow-thru entity ends. As a result, if a flow-thru entity uses a taxable year that is the same as the taxable year of its owners, the owners will report income earned by the entity in the year that the income is earned. If a flow-thru entity uses a taxable year that is different than the taxable year of its owners, the owners will defer reporting a portion of the income earned by the entity until the year following the year the income was earned. In order to avoid this deferral, under present law, a flow-through entity generally must use a taxable year that corresponds to the taxable years of its owners (i.e., generally, the calendar year in the case of an entity owned by individuals).

However, under certain circumstances, deferral through use of a fiscal year is permitted (sec. 444). A flow-thru entity may use a fiscal year that it used prior to 1987 or a fiscal year that provides up to a 3-month deferral so long as it makes a payment equal to the income attributable to the deferral period times the highest individual tax rate plus 1 percentage point (currently, 40.6 percent). Such payments remain on deposit and may be refunded if the income of the entity for the deferral period diminishes or the entity abandons its fiscal year (sec. 7519).

House bill

The House bill allows any flow-thru entity to use a fiscal year so long as the entity makes quarterly estimated tax payments at an applicable rate. These estimated tax payments are treated as estimated tax payments of the owners of the flow-thru entity for the owners' taxable year in which the fiscal year ends. Estimated tax payments are not required for a taxable year if the amount of aggregate payments otherwise due is $5,000 or less.

In determining its quarterly estimated tax payments, the entity may use (1) the 100-percent method, (2) the 110-percent method, or (3) the annualization method. Under the 100-percent method, the required quarterly installment is one-quarter of the product of the entity's applicable income for the current year and the applicable rate. Under the 110-percent method, the required quarterly installment is one-quarter of 110 percent of the product of the entity's applicable income for the preceding year and the applicable rate. The 110-percent method is not available if the entity's current year applicable income exceeds its preceding-year applicable income by more than $750,000. Under the annualization method, the required quarterly installment is one-quarter of the product of the entity's annualized applicable income and the applicable rate. "Applicable income" is determined by taking the entity's items into account under subchapter K or S, as the case may be, with certain adjustments. The "applicable rate" is 34 percent, unless the flow-thru entity is a "high income average entity," in which case the applicable rate is 39.6 percent. A "high average income entity" is one where the average applicable income of the 2-percent owners for the preceding year was at least $250,000 or, in the case of a partnership, the applicable income for the preceding year was at least $10,000,000.

A flow-thru entity is not allowed to make a new election under present-law section 444. An entity that currently has a section 444 election in effect may (1) retain the election or (2) revoke the election and receive a refund of its deposit, or (3) make a new section 444 election and treat its deposit as a payment of estimated tax under the provision.

Effective date.—The provision is effective for taxable years beginning after December 31, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

D. TAX-EXEMPT BOND PROVISIONS

1. REPEAL OF $100,000 LIMITATION ON UNSPENT PROCEEDS UNDER 1-YEAR EXCEPTION FROM REBATE (SEC. 14561 OF THE HOUSE BILL)

Present law

Generally, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. No rebate is required six months after issuance by issuers of certain governmental bonds and qualified 501(c)(3) bonds if (1) all proceeds other than an amount not exceeding the lesser of five percent or $100,000 are spent within six months and (2) the remaining proceeds are spent within one year after the bonds are issued.

House bill

The House bill repeals the $100,000 limit on proceeds that may remain unspent after six months for certain governmental and qualified 501(c)(3) bonds.

Effective date.—Bonds issued after the date of enactment.

Senate agreement

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. EXCEPTION FROM REBATE FOR EARNINGS ON BONA FIDE DEBT SERVICE FUND UNDER CONSTRUCTION BOND RULES (SEC. 14562 OF THE HOUSE BILL)

Present law

In general, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. An exception is provided for certain construction bond issues if the available construction proceeds of the issue are spent at minimum specified rates during the 24-month period after the bonds are issued. The exception does not apply to bond proceeds invested after the 24-month expenditure period as part of a bona fide debt service fund.

House bill

The House bill exempts earnings on bond proceeds invested in bona fide debt service funds from the arbitrage rebate requirement and the penalty requirement of the 24-month exception if the spending requirements of that exception are otherwise satisfied.

Effective date.—Bonds issued after the date of enactment.

Senate agreement

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

3. REPEAL OF DEBT SERVICE-BASED LIMITATION ON INVESTMENT IN CERTAIN NONPURPOSE INVESTMENTS (SEC. 14563 OF THE HOUSE BILL)

Present law

With certain exceptions, present law limits the amount of the proceeds of private activity bonds (other than qualified 501(c)(3) bonds) that may be invested at materially higher yields at any time during a bond year to 150 percent of the debt service for that bond year. (Any profits earned from higher yielding investments generally must be rebated to the Federal government.)

House bill

The House bill repeals the 150-percent of debt service yield restriction.

Effective date.—Bonds issued after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. REPEAL OF EXPIRED TAX-EXEMPT BOND PROVISIONS (SEC. 14564 OF THE HOUSE BILL)

Present law

Present law includes two special exceptions to the arbitrage rebate and pooled financing temporary period rules for certain qualified student loan bonds. These exceptions applied only to bonds issued before January 1, 1989.

House bill

The House bill repeals these special exceptions as "deadwood."

Effective date.—Date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

E. INSURANCE PROVISIONS

1. TREATMENT OF CERTAIN INSURANCE CONTRACTS ON RETIRED LIVES (SEC. 14571 OF THE HOUSE BILL AND SEC. 12877 OF THE SENATE AMENDMENT)

Present law

Life insurance companies are allowed a deduction for any net increase in reserves and are required to include in income any net decrease in reserves. The reserve of a life insurance company for any contract is the greater of the net surrender value of the contract or the reserve determined under Federally prescribed rules. In no event, however, may the amount of the reserve for tax purposes for any contract at any time exceed the amount of the reserve for annual statement purposes.

Special rules are provided in the case of a variable contract. Under these rules, the reserve for a variable contract is adjusted by (1) subtracting any amount that has been added to the reserve by reason of appreciation in the value of assets underlying such contract, and (2) adding any amount that has been subtracted from the reserve by reason of depreciation in the value of assets underlying such contract. In addition, the basis of each asset underlying a variable contract is adjusted for appreciation or depreciation to the extent the reserve is adjusted.

A variable contract generally is defined as any annuity or life insurance contract (1) that provides for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset accounts of the company, and (2) under which, in the case of an annuity contract, the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account, or, in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account. A pension plan contract that is not a life, accident, or health, property, casualty, or liability insurance contract is treated as an annuity contract for purposes of this definition.

House bill

The House bill provides that a variable contract is to include a contract that provides for the funding of group term life or group accident and health insurance on retired lives if: (1) the contract provides for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset account of the company; and (2) the amounts paid in, or the amounts paid out, under the contract reflect the investment return and the market value of the segregated asset account underlying the contract.

Thus, the reserve for such a contract is to be adjusted by (1) subtracting any amount that has been added to the reserve by reason of appreciation in the value of assets underlying such contract, and (2) adding any amount that has been subtracted from the reserve by reason of depreciation in the value of assets underlying such contract. In addition, the basis of each asset underlying the contract is to be adjusted for appreciation or depreciation to the extent that the reserve is adjusted.

Effective date.—The provision applies to taxable years beginning after December 31, 1995.

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. TREATMENT OF MODIFIED GUARANTEED CONTRACTS (SEC. 14572 OF THE HOUSE BILL AND SEC. 12878 OF THE SENATE AMENDMENT)

Present law

Life insurance companies are allowed a deduction for any net increase in reserves and are required to include in income any net decrease in reserves. The reserve of a life insurance company for any contract is the greater of the net surrender value of the contract or the reserve determined under Federally prescribed rules. The net surrender value of a contract is the cash surrender value reduced by any surrender penalty, except that any market value adjustment required on surrender is not taken into account. In no event, however, may the amount of the reserve for tax purposes for any contract at any time exceed the amount of the reserve for annual statement purposes.

In general, assets held for investment are treated as capital assets. Any gain or loss from the sale or exchange of a capital asset is treated as a capital gain or loss and is taken into account for the taxable year in which the asset is sold or exchanged.

House bill

The House bill generally applies a mark-to-market regime to assets held as part of a segregated account under a modified guaranteed contract issued by a life insurance company. Gain or loss with respect to such assets held as of the close of any taxable year are taken into account for that year (even though the assets have not been sold or exchanged),[119] and are treated as ordinary. If gain or loss is taken into account by reason of the mark-to-market requirement, then the amount of gain or loss subsequently realized as a result of sale, exchange, or other disposition of the asset, or as a result of the application of the mark-to-market requirement is appropriately adjusted to reflect such gain or loss. In addition, the reserve for a modified guaranteed contract is determined by taking into account the market value adjustment required on surrender of the contract.

A modified guaranteed contract is defined as any life insurance contract, annuity contract or pension plan contract[120] that is not a variable contract (within the meaning of Code section 817), and that satisfies the following requirements. All or a part of the amounts received under the contract must be allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time by reference to market values.

The Treasury Department is authorized to issue regulations or other guidance under the provision.

Effective date.—The provision applies to taxable years beginning after December 31, 1995. A taxpayer that is required to (1) change its calculation of reserves to take into account market value adjustments and (2) mark to market its segregated assets in order to comply with the requirements of the provision is treated as having initiated changes in method of accounting and as having received the consent of the Treasury Department to make such changes.

The section 481(a) adjustments required by reason of the changes in method of accounting are to be combined and taken into account as a single net adjustment for the taxpayer's first taxable year beginning after December 31, 1995.

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, with clarifications.

Under the House bill and the Senate amendment, the reserves for a modified guaranteed contract must be valued at market for annual statement purposes and the Federally prescribed reserve for the contract under section 807(d)(2) must be valued at market. The Senate Finance committee report provides that for this purpose, reserves are valued at market if they are calculated using a current market rate of interest, as of the reserve valuation date, that is appropriate for the obligations under the contract to which the reserve relates.

[119] The wash sale rules of section 1091 of the Code are not to apply to any loss that is required to be taken into account solely by reason of the mark-to-market requirement.

[120] The provision applies only to a pension plan contract that is not a life, accident or health, property, casualty, or liability contract.

The House bill and the Senate amendment also provide that the Treasury Department is authorized to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B) and 812 with respect to modified guaranteed contracts annually, calculating such rates as appropriate for modified guaranteed contracts. For example, it may be appropriate to take into account the yield on the assets underlying the contract in determining such rates.

The conference agreement clarifies that the Treasury Department has discretion to determine an appropriate rate that is a current market rate, which could be determined, for example, either by using a rate that is appropriate for the obligations under the contract to which the reserve relates, or by taking into account the yield on the assets underlying the contract.

The conferees intend that the Treasury Department may exercise this authority by issuing a periodic announcement of the appropriate market interest rates or formula for determining such rates.

3. MINIMUM TAX TREATMENT OF CERTAIN PROPERTY AND CASUALTY INSURANCE COMPANIES (SEC. 14573 OF THE HOUSE BILL)

Present law

Property and casualty insurance companies whose net written premiums (or if greater, direct written premiums) for the taxable year exceed $350,000 but do not exceed $1,200,000 may elect to be taxed only on taxable investment income for regular tax purposes, without regard to underwriting income or expense (sec. 831(b)).

This election does not apply for alternative minimum tax purposes. All corporations, including insurance companies, are subject to an alternative minimum tax. Alternative minimum taxable income is increased by 75 percent of the excess of adjusted current earnings over alternative minimum taxable income (determined without regard to this adjustment and without regard to net operating losses).

House bill

The House bill provides that a property and casualty insurance company that elects for regular tax purposes to be taxed only on taxable investment income determines its adjusted current earnings under the alternative minimum tax without regard to any amount not taken into account in determining its gross investment income under section 834(b). Thus, adjusted current earnings of an electing company is determined without regard to underwriting income (or underwriting expense, as provided in sec. 56(g)(4)(B)(I)(II)).

Effective date.—Taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

F. OTHER PROVISIONS

1. CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER (SEC. 14581 OF THE HOUSE BILL)

Present law

The partnership taxable year closes with respect to a partner whose entire interest is sold, exchanged or liquidated, but generally not upon the death of a partner. A decedent's entire share of items of income, gain, loss, deduction and credit for the partnership taxable year in which death occurs is taxed to the decedent's estate or successor in interest, rather than to the decedent on his or her final tax return. See *Estate of Hesse* v. *Commissioner*, 74 T.C. 1307, 1311 (1980).

House bill

The House bill provides that the taxable year of a partnership closes with respect to a partner whose entire interest in the partnership terminates, whether by death, liquidation or otherwise. The provision is not intended to change present law with respect to the effect upon the partnership taxable year of a transfer of a partnership interest by a debtor to the debtor's estate (under Chapters 7 or 11 of Title 11, relating to bankruptcy).

Effective date.—Partnership taxable years beginning after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. TAX CREDIT FOR SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS (SEC. 14582 OF THE HOUSE BILL)

Present law

Employee tip income is treated as employer-provided wages for purposes of the Federal Insurance Contributions Act ("FICA"). Employees are required to report to the employer the amount of tips received. The Omnibus Budget Reconciliation Act of 1993 ("OBRA 1993") provided a business tax credit with respect to certain employer FICA taxes paid with respect to tips treated as paid by the employer. The credit applies to tips received from customers in connection with the provision of food or beverages for consumption on the premises of an establishment with respect to which the tipping of employees is customary. OBRA 1993 provided that the FICA tip credit is effective for taxes paid after December 31, 1993. Temporary Treasury regulations provide that the tax credit is available only with respect to tips reported by the employee. The temporary regulations also provide that the credit is effective for FICA taxes paid by an employer after December 31, 1993, with respect to tips received for services performed after December 31, 1993.

House bill

The House bill clarifies the credit with respect to employer FICA taxes paid on tips by providing that the credit is available whether or not the employee reported the tips and that the credit is effective with respect to taxes paid after December 31, 1993, regardless of when the services with respect to which the tips are received were performed.

Effective date.—The provision is effective as if included in OBRA 1993.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. DUE DATE FOR FIRST QUARTER ESTIMATED TAX PAYMENTS BY PRIVATE FOUNDATIONS (SEC. 14583 OF THE HOUSE BILL)

Present law

Under section 4940, tax-exempt private foundations generally are required to pay an excise tax equal to two percent of their net investment income for the taxable year. Under section 6655(g)(3), private foundations are required to pay estimated tax with respect to their excise tax liability under section 4940 (as well as any unrelated business income tax (UBIT) liability under section 511).[121] Section 6655(c) provides that this estimated tax is payable in quarterly installments and that, for calendar-year foundations, the first quarterly installment is due on April 15th. Under section 6655(I), foundations with taxable years other than the calendar year must make their quarterly estimated tax payments no later than the dates in their fiscal years that correspond to the dates applicable to calendar-year foundations.

House bill

The House bill amends section 6655(g)(3) to provide that a calendar-year foundation's first-quarter estimated tax payment is due on May 15th (which is the same day that its annual return, Form 990-PF, for the preceding year is due). As a result of the operation of present-law section 6655(I), fiscal-year foundations will be required to make their first-quarter estimated tax payment no later than the 15th day of the fifth month of their taxable year.

Effective date.—Taxable years beginning after 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

[121] Generally, the amount of the first quarter payment must be at least 25 percent of the lesser of (1) the preceding year's tax liability, as shown on the foundation's Form 990–PF, or (2) 95 percent of the foundation's current-year tax liability.

XVI. SIMPLIFICATION PROVISIONS RELATING TO ESTATES, GIFTS, AND TRUSTS

A. ESTATE AND TRUST INCOME TAX PROVISIONS

1. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE (SEC. 14601 OF THE HOUSE BILL)

Present law

While both estates and revocable inter vivos trusts perform essentially the same function of administering the disposition of the decedent's property after the testator or grantor's death, numerous differences presently exist between the income tax treatment of estates and revocable trusts.

House bill

The House bill provides an irrevocable election to treat a qualified revocable trust as part of the decedent's estate for Federal income tax purposes. This elective treatment is effective from the date of the decedent's death until two years after his or her death (if no estate tax return is required) or six months after the final determination of estate tax liability (if an estate tax return is required).

Effective date.—Effective for decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with technical modifications that (1) provide an election for a revocable trust to be treated as an estate in cases where there is no taxable estate; and (2) permit the election to be made in cases where only a portion of a revocable trust is treated as owned by the decedent.

2. DISTRIBUTIONS DURING FIRST 65 DAYS OF TAXABLE YEAR OF ESTATE (SEC. 14602 OF THE HOUSE BILL)

Present law

Under the "65-day rule," a trust may elect to treat distributions paid within 65 days after the close of its taxable year as paid on the last day of its taxable year (sec. 663(b)). The 65-day rule is not applicable to estates.

House bill

The House bill extends application of the 65-day rule to distributions by estates. Thus, an executor can elect to treat distributions paid within 65 days after the close of the estate's taxable year as having been paid on the last day of such taxable year.

Effective date.—Effective for taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. SEPARATE SHARE RULES AVAILABLE TO ESTATES (SEC. 14603 OF THE HOUSE BILL)

Present law

Trusts with more than one beneficiary must use the "separate share" rule under which different tax treatment is accorded to distributions to different beneficiaries to reflect the income earned by different shares of the trust's corpus (sec. 663(c)). The separate share rule does not apply to estates.

House bill

The House bill extends the application of the separate share rule to estates. There are separate shares in an estate when the governing instrument of the estate creates separate economic interests in one beneficiary or class of beneficiaries such that the economic interests of those beneficiaries are not affected by economic interests accruing to another separate beneficiary or class of beneficiaries.

Effective date.—Effective for decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. EXECUTOR OF ESTATE AND BENEFICIARIES TREATED AS RELATED PERSONS FOR DISALLOWANCE OF LOSSES, ETC. (SEC. 14604 OF THE HOUSE BILL)

Present law

Section 267 disallows a deduction for any loss on the sale of an asset to a person related to the taxpayer. Section 1239 disallows capital gain treatment on the sale of depreciable property to a related person. Neither section 267 or section 1239 presently treat an estate and a beneficiary of the estate as related persons.

House bill

An estate and a beneficiary of that estate are treated as related persons for purposes of sections 267 and 1239, except in the case of a sale or exchange in satisfaction of a pecuniary bequest.

Effective date.—Effective for taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. LIMITATION ON TAXABLE YEAR OF ESTATES (SEC. 14605 OF THE HOUSE BILL)

Present law

Trusts are required to use a calendar year and, consequently, income of a trust that is distributed to a calendar-year beneficiary in the year earned is taxed to the beneficiary in the year earned. In contrast, estates are allowed to use any fiscal year and, consequently, the taxation of distributions to a calendar-year beneficiary in up to the last 11 months of the calendar year can be deferred until the next taxable year depending upon the fiscal year selected.

House bill

The House bill limits the taxable year of an estate to a year ending on October 31, November 30, or December 31. Thus, the maximum deferral allowable to a calendar-year beneficiary is with respect to distributions made in the last two months of the calendar year.

Effective date.—Effective for decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

6. REPEAL OF CERTAIN THROWBACK RULES APPLICABLE TO DOMESTIC TRUSTS (SEC. 14606 OF THE HOUSE BILL)

Present law

Nongrantor trusts are subject to a separate graduated tax rate structure which historically has permitted accumulated trust income to be taxed at lower rates than the rates applicable to trust beneficiaries. Under the so-called "throwback" rules, the distribution of previously accumulated trust income to a beneficiary is subject to tax (in addition to any tax paid by the trust on that income) where the beneficiary's average top marginal rate in the previous five years is higher than that of the trust.

Under section 644, if property is sold within two years of its contribution to a trust, the gain that would have been recognized had the contributor sold the property is taxed at the contributor's marginal tax rates. In effect, section 644 treats such gains as if the contributor had realized the gain and then transferred the net after-tax proceeds from the sale to the trust as corpus.

House bill

The House bill exempts from the throwback rules amounts distributed by a domestic trust after December 31, 1995. The provision also provides that precontribution gain on property sold by a domestic trust no longer is subject to section 644 (i.e., taxed at the contributor's marginal tax rates).

Effective date.—The provision with respect to the throwback rules is effective for distributions made in taxable years beginning after December 31, 1995. The modification to section 644 applies to sales or exchanges after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

7. TREATMENT OF FUNERAL TRUSTS (SEC. 14607 OF THE HOUSE BILL)

Present law

A pre-need funeral trust is an arrangement where an individual purchases funeral services or merchandise in advance of the individual's death. The individual enters into a contract with the provider of such services or merchandise whereby the individual selects the services or merchandise to be provided upon his or her death, and agrees to pay for them in advance of his or her death. Such amounts (or a portion thereof) are held in trust during the individual's lifetime and are paid to the seller upon the individual's death.

Under present law, pre-need funeral trusts generally are treated as grantor trusts, and the annual income earned by such trusts is taxed to the purchaser/grantor of the trust. Rev. Rul. 87–127. Any amount received from the trust by the seller (as payment for services or merchandise) is includible in the gross income of the seller.

House bill

The House bill allows the trustee of a pre-need funeral trust to elect special tax treatment for such a trust, to the extent the trust would otherwise be treated as a grantor trust. A qualified funeral trust is defined as one which meets the following requirements: (1) the trust arises as the result of a contract between a person engaged in the trade or business of providing funeral or burial services or merchandise and one or more individuals to have such services or property provided upon such individuals' death; (2) the only beneficiaries of the trust are individuals who have entered into contracts to have such services or merchandise provided upon their death; (3) the only contributions to the trust are contributions by or for the benefit of the trust beneficiaries; (4) the trust's only purpose is to hold and invest funds that will be used to make payments for funeral or burial services or merchandise for the trust beneficiaries; and (5) the trust has not accepted contributions totaling more than $5,000 by or for the benefit of any individual.

The trustee's election to have this provision apply to a qualified funeral trust is to be made separately with respect to each purchaser's trust. The amount of tax paid with respect to each purchaser's trust is determined in accordance with the income tax rate schedule generally applicable to estates and trusts (Code sec. 1(e)), but no deduction is allowed under section 642(b). The tax on the annual earnings of the trust is payable by the trustee.

Effective date.—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 modification that a qualified funeral trust may accept aggregate contributions of up to $7,000 by or for the benefit of any individual.

B. ESTATE AND GIFT TAX PROVISIONS

1. CLARIFICATION OF WAIVER OF CERTAIN RIGHTS OF RECOVERY (SEC. 14611 OF THE HOUSE BILL)

Present law

For estate and gift tax purposes, a marital deduction is allowed for qualified terminable interest property (QTIP). Such property generally is included in the surviving spouse's gross estate upon his or her death. The surviving spouse's estate is entitled to recover the portion of the estate tax attributable to inclusion of QTIP from the person receiving the property, unless the spouse directs otherwise by will (sec. 2207A). For this purpose, a will provision specifying that all taxes shall be paid by the estate is sufficient to waive the right of recovery.

A decedent's gross estate includes the value of previously transferred property in which the decedent retains enjoyment or the right to income (sec. 2036). The estate is entitled to recover from the person receiving the property a portion of the estate tax attributable to the inclusion (sec. 2207B). This right may be waived only by a provision in the will (or revocable trust) specifically referring to section 2207B.

House bill

The House bill provides that the right of recovery with respect to QTIP is waived only to the extent that language in the decedent's will or revocable trust specifically so indicates (e.g., by a specific reference to QTIP, the QTIP trust, section 2044, or section 2207A). Thus, a general provision specifying that all taxes be paid by the estate is no longer sufficient to waive the right of recovery.

The House bill also provides that the right of contribution for property over which the decedent retained enjoyment or the right to income is waived by a specific indication in the decedent's will or revocable trust, but specific reference to section 2207B is no longer required.

Effective date.—Effective for decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. ADJUSTMENTS FOR GIFTS WITHIN 3 YEARS OF DECEDENT'S DEATH (SEC. 14612 OF THE HOUSE BILL)

Present law

A taxpayer may exclude $10,000 of gifts of present interests in property made to each donee during a calendar year. Certain transfers made from a revocable trust within three years of death may be included in the decedent's gross estate even though such transfers would qualify for the annual $10,000 exclusion if made by the decedent directly.

House bill

The House bill provides that a transfer from a revocable trust is treated as if made directly by the grantor. Thus, an annual exclusion gift from such trust is not included in the gross estate.

Effective date.—Effective for decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. CLARIFICATION OF QUALIFIED TERMINABLE INTEREST RULES (SEC. 14613 OF THE HOUSE BILL)

Present law

A marital deduction is allowed for qualified terminal interest property ("QTIP"). Property is QTIP only if the surviving spouse is entitled to all income from the property for life, payable at least annually. QTIP generally is includible in the surviving spouse's gross estate.

The United States Tax Court has held that, in order to satisfy the QTIP requirements, the income accumulating between the last distribution date and the date of the surviving spouse's death (the "accumulated income") must be paid to the spouse's estate or be subject to a power of appointment held by the spouse. In contrast, proposed Treasury regulations presently provide that the QTIP requirements may be satisfied even if the accumulated income is not required to be distributed to the surviving spouse or the surviving spouse's estate.

House bill

The House bill provides that property does not fail to be QTIP solely because the accumulated income is not required to be distributed to the surviving spouse. Such income is includible in the surviving spouse's gross estate.

Effective date.—Effective for decedents dying, and gifts made, after the date of enactment. However, the bill does not include in the surviving spouse's gross estate property transferred before the date of enactment for which no marital deduction was claimed.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. TRANSITIONAL RULE UNDER SECTION 2056A (SEC. 14614 OF THE HOUSE BILL)

Present law

A "marital deduction" generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. The marital deduction is not available for property passing to an alien spouse outside a qualified domestic trust ("QDT"). An estate tax generally is imposed on corpus distributions from a QDT.

A QDT was originally defined as a trust that, among other things, required all trustees be U.S. citizens or domestic corporations. This provision was later modified to require that at least one trustee be a U.S. citizen or domestic corporation and that no corpus distribution be made unless such trustee has the right to withhold any estate tax imposed on the distribution (the "withholding requirement").

House bill

A trust created before the enactment of the Omnibus Budget Reconciliation Act of 1990 is treated as satisfying the withholding requirement if its governing instrument requires that all trustees be U.S. citizens or domestic corporations.

Effective date.—The provision applies as if included in the Omnibus Budget Reconciliation Act of 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. OPPORTUNITY TO CORRECT CERTAIN FAILURES UNDER SECTION 2032A (SEC. 14615 OF THE HOUSE BILL)

Present law

For estate tax purposes, an executor may elect to value certain real property used in farming or other closely held business operations at its current use value rather than its highest and best use (sec. 2032A). A written agreement signed by each person who has an interest in the property must be filed with the election.

In 1984, section 2032A was amended to provide that if an executor makes a timely election that substantially complies with Treasury regulations, but fails to provide all required information or the signatures of all persons required to enter into the agreement, the executor may supply the missing information within a reasonable period of time (not exceeding 90 days) after notification by the Treasury Department.

House bill

The House bill extends the procedures allowing subsequent submission of information to any executor who makes a timely election and submits the recapture agreement, without regard to substantial compliance with the Treasury regulations. Thus, the bill allows a technically defective current use valuation election to be corrected if the executor supplies the missing information or signatures within a reasonable period of time (not exceeding 90 days) after notification by the Treasury Department.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. The conferees believe that the Treasury Department has taken an unnecessarily restrictive view of the 1984 amendment to section 2032A and intend no inference that the Treasury Department lacks the power, under the law in effect prior to enactment of the conference agreement, to correct the situation addressed by this provision. The conferees intend that, with respect to technically defective 2032A elections made prior to the date of enactment, prior law should be applied in a manner consistent with the provision.

6. UNIFIED CREDIT OF DECEDENT INCREASED BY UNIFIED CREDIT OF SPOUSE USED ON SPLIT GIFT INCLUDED IN DECEDENT'S GROSS ESTATE (SEC. 14616 OF THE HOUSE BILL)

Present law

The estate tax is imposed on all of the assets held by the decedent at his death, including the value of property previously transferred by the decedent in which the decedent retained certain powers or interests, e.g., sections 2036 (transfers with retained life estate), 2037 (transfers taking effect at death), 2038 (revocable transfers), or 2042 (proceeds of life insurance). Under section 2035, the estate tax also would apply with respect to property in which such a retained power or interest is transferred within three years of death.

Under section 2513, spouses may elect to treat a gift made by one spouse to a third person as made one-half by each spouse (i.e., "gift-splitting").

House bill

With respect to any split-gift property that is subsequently included in the estate of the transferor spouse under sections 2035, 2036, 2037 or 2038, the House bill increases the unified credit allowable to the transferor spouse's estate by the amount of the unified credit previously allowed to the nontransferor spouse with respect to the split gift.

Effective date.—The provision applies to gifts made after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

7. REFORMATION OF DEFECTIVE BEQUESTS, ETC. TO SPOUSE OF DECEDENT (SEC. 14617 OF THE HOUSE BILL)

Present law

A marital deduction generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. However, "terminable interest" property (i.e., an interest in property that will terminate or fail) transferred to a spouse generally will only qualify for the marital deduction under certain special rules designed to ensure that there will be an estate or gift tax to the transferee spouse on unspent transferred proceeds.

One of the special terminable interest rules allows a marital deduction where the decedent transfers property to a "power of appointment trust," i.e., a trust that is required to pay income to the surviving spouse and over which the surviving spouse has a general power of appointment at that spouse's death (sec. 2056(b)(5)). Another special rule called the "qualified terminable interest property" rule ("QTIP") generally permits a marital deduction for transfers by the decedent to a trust that is required to distribute all income to the surviving spouse for life at least annually and an election is made to subject the transferee spouse to transfer tax on the trust property.

To qualify for the marital deduction, a power of appointment trust or QTIP trust must meet certain specific requirements. If there is a technical defect in meeting those requirements, the marital deduction may be lost.

House bill

The House bill allows the marital deduction with respect to a defective power of appointment or QTIP trust if there is a "qualified reformation" of the trust that changes the governing instrument in a manner that corrects the defect. Where a reformation proceeding is commenced after the due date for the estate tax return (including extensions), the reformation qualifies only if, prior to reformation, the governing instrument provides (1) that the surviving spouse is entitled to all income from the property for life, and (2) no person other than the surviving spouse is entitled to any distributions during the surviving spouse's life. With respect to QTIP, an election to qualify must be made by the executor on the estate tax return as required by section 2056(b)(7)(B)(v).

The determination as to whether the property qualifies for the marital deduction is made either as of the due date for filing the estate or gift tax return (including any extensions) or the time that changes are completed pursuant to a reformation proceeding. The statute of limitations is extended with respect to the estate or gift tax attributable to the trust property until one year after the date the Treasury Department is notified that a qualified reformation has been completed or that the reformation proceeding has otherwise terminated.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

8. GIFTS MAY NOT BE REVALUED FOR ESTATE TAX PURPOSES AFTER EXPIRATION OF STATUTE OF LIMITATIONS (SEC. 14618 OF THE HOUSE BILL)

Present law

The Federal estate and gift taxes are unified so that a single progressive rate schedule is applied to an individual's cumulative gifts and bequests. The tax on gifts made in a particular year is computed by determining the tax on the sum of the taxable gifts made that year and all prior years and then subtracting the tax on the prior years' taxable gifts and the unified credit. Similarly, the estate tax is computed by determining the tax on the sum of the taxable estate and prior taxable gifts and then subtracting the tax on taxable gifts and the unified credit. Under a special rule applicable to the computation of the gift tax (sec. 2504(c)), the value of gifts made in prior years is the value that was used to determine the prior year's gift tax. There is no comparable rule in the case of the computation of the estate tax.

Generally, any estate or gift tax must be assessed within three years after the filing of the return. No proceeding in a court for the collection of an estate or gift tax can be begun without an assessment within the three-year period. If no return is filed, the tax may be assessed, or a suit commenced to collect the tax without assessment, at any time. If an estate or gift tax return is filed, and the amount of unreported items exceeds 25 percent of the amount of the reported items, the tax may be assessed or a suit commenced to collect the tax without assessment, within six years after the return was filed (sec. 6501).

Commencement of the statute of limitations generally does not require that a particular gift be disclosed. A special rule, however, applies to certain gifts that are valued under the special valuation rules of Chapter 14. The gift tax statute of limitations runs for such a gift only if it is disclosed on a gift tax return in a manner adequate to apprise the Secretary of the Treasury of the nature of the item.

Most courts have permitted the Commissioner to redetermine the value of a gift for which the statute of limitations period for the gift tax has expired in order to determine the appropriate tax rate bracket and unified credit for the estate tax.

House bill

The House bill provides that a gift for which the limitations period has passed cannot be revalued for purposes of determining the applicable estate tax bracket and available unified credit. For gifts made in calendar years after the date of enactment, the House bill also extends the special rule governing gifts valued under Chapter 14 to all gifts. Thus, the statute of limitations will not run on an inadequately disclosed transfer in calendar years after the date of enactment, regardless of whether a gift tax return was filed for other transfers in that same year.

It is intended that, in order to revalue a gift that has been adequately disclosed on a gift tax return, the IRS must issue a final notice of redetermination of value (a "final notice") within the statute of limitations applicable to the gift for gift tax purposes (generally, three years). This rule is applicable even where the value of the gift as shown on the return does not result in any gift tax being owed (e.g., through use of the unified credit). It also is anticipated that the IRS will develop an administrative appeals process whereby a taxpayer can challenge a redetermination of value by the IRS prior to issuance of a final notice.

A taxpayer who is mailed a final notice may challenge the redetermined value of the gift (as contained in the final notice) by filing a motion for a declaratory judgment with the United States Tax Court. The motion must be filed on or before 90 days from the date that the final notice was mailed. The statute of limitations is tolled during the pendency of the Tax Court proceeding.

Effective date.—The provision generally applies to gifts made after the date of enactment. The extension of the special rule under chapter 14 to all gifts applies to gifts made in calendar years after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

9. CLARIFICATIONS RELATING TO DISCLAIMERS (SEC. 14619 OF THE HOUSE BILL)

Present law

Historically, there must be acceptance of a gift in order for the gift to be completed under State law and there is no taxable gift for Federal gift tax purposes unless there is a completed gift. Most States have rules that provide that, where there is a disclaimer of a gift, the property passes to the person who is entitled to the property had the disclaiming party died before the purported transfer.

Under section 2518, a State law type disclaimer is effective for Federal transfer tax purposes if it is an irrevocable and unqualified refusal to accept an interest in property and certain other requirements are satisfied. One of these other requirements is that the disclaimer generally must be made in writing not later than nine months after the transfer creating the interest occurs. Section 2518 is not presently effective for Federal tax purposes other than transfer taxes.

Certain transfers of property also can be treated as qualified disclaimers under section 2518. In order to qualify, these transfer-type disclaimers must be a written transfer of the disclaimant's "entire interest in the property" to persons who would have received the property had there been a valid disclaimer under State law (sec. 2518(c)(3)). Like other disclaimers, the transfer-type disclaimer generally must be made within nine months of the transfer creating the interest.

House bill

The House bill allows a transfer-type disclaimer of an "undivided portion" of the disclaimant transferor's interest in property to qualify under section 2518. The House bill also allows a spouse to make a qualified transfer-type disclaimer where the disclaimed property is transferred to a trust in which the disclaimant spouse has an interest (e.g., a credit shelter trust). Finally, the House bill provides that a qualified disclaimer for transfer tax purposes under section 2518 also is effective for Federal income tax purposes (e.g., disclaimers of interests in annuities and income in respect of a decedent).

Effective date.—The provision applies to disclaimers made after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

10. CLARIFICATION OF TREATMENT OF SURVIVOR ANNUITIES UNDER QUALIFIED TERMINABLE INTEREST RULES (SEC. 14620 OF THE HOUSE BILL)

Present law

Under State community property laws, each spouse owns an undivided one-half interest in each community property asset. In community property States, a nonparticipant spouse may be treated as having a vested community property interest in his or her spouse's qualified plan, individual retirement arrangement, or simplified employee pension plan.

A survivorship interest in an annuity interest arising out of the decedent's employment that is includible in his or her estate (under section 2039) that passes to the nonparticipant spouse is treated as a deductible marital transfer under the qualified terminable interest property ("QTIP") rules unless the executor of the decedent's estate elects otherwise (sec. 2056(b)(7)(C)). Thus, in noncommunity property States, no estate tax generally is imposed on such survivor annuity interests in the nonsurviving spouse's estate. In contrast, an interest of the nonparticipant spouse arising under community property laws in an annuity derived from the employment of his or her spouse is includible in his or her estate under section 2033 and, therefore, may not qualify as a deductible transfer to his or her surviving spouse under the QTIP rules.

House bill

The House bill clarifies that the marital deduction is available with respect to a nonparticipant spouse's interest in an annuity attributable to community property laws where he or she predeceases the participant spouse. Under the House bill, the nonparticipant spouse's interest in an annuity arising under the community property laws of a State that passes to the surviving participant spouse may qualify for treatment as QTIP under section 2056(b)(7).

Effective date.—The provision applies to decedents dying, or waivers, transfers and disclaimers made, after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

11. TREATMENT UNDER QUALIFIED DOMESTIC TRUST RULES OF FORMS OF OWNERSHIP WHICH ARE NOT TRUSTS (SEC. 14621 OF THE HOUSE BILL)

Present law

A marital deduction generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. The marital deduction is not available for property passing to an alien spouse outside a qualified domestic trust ("QDT"). An estate tax generally is imposed on corpus distributions from a QDT.

Trusts are not permitted in some countries (e.g., many civil law countries). As a result, it is not possible to create a QDT in those countries.

House bill

The House bill provides the Treasury Department with regulatory authority to treat as trusts legal arrangements that have substantially the same effect as a trust. It is anticipated that such regulations, if any, would only permit a marital deduction with respect to nontrust arrangements under which the U.S. would retain jurisdiction and adequate security to impose U.S. transfer tax on transfers by the surviving spouse of the property transferred by the decedent.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

12. AUTHORITY TO WAIVE REQUIREMENT OF UNITED STATES TRUSTEE FOR QUALIFIED DOMESTIC TRUSTS (SEC. 14622 OF THE HOUSE BILL)

Present law

In order for a trust to be a QDT, a U.S. trustee must have the power to approve all corpus distributions from the trust. In some countries, trusts may be prohibited from having a U.S. trustee (e.g., some countries do not allow real property to be placed in trust if a U.S. trustee must approve distributions from the trust.) As a result, such trusts cannot qualify as a QDT.

House bill

In order to permit the establishment of a QDT in those situations where a country prohibits a trust from having a U.S. trustee, the House bill provides the Treasury Department with regulatory authority to waive the requirement that a QDT have a U.S. trustee. It is anticipated that such regulations, if any, provide an alternative mechanism under which the U.S. would retain jurisdiction and adequate security to impose U.S. transfer tax on transfers by the surviving spouse of the property transferred by the decedent.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

C. GENERATION-SKIPPING TAX PROVISIONS

1. SEVERING OF TRUSTS HOLDING PROPERTY HAVING AN INCLUSION RATIO OF GREATER THAN ZERO (SEC. 14631 OF THE HOUSE BILL)

Present law

A generation-skipping transfer tax (“GST” tax) generally is imposed on transfers to an individual who is in more than one generation below that of the transferor. An exemption of $1 million is provided for each person making generation-skipping transfers. The transferor (or his or her executor) may allocate the exemption to transferred property. If the value of the transferred property exceeds the amount of the GST exemption allocated to that property, an “inclusion ratio” and an “exclusion ratio” are determined with respect to the property. The exclusion ratio is equal to the amount of the GST exemption allocated to the property divided by the value of the property. The inclusion ration is equal to one minus the exclusion ratio. For any taxable event that occurs with respect to the property, the amount of GST tax generally is determined by multiplying highest estate tax rate by the inclusion ratio and the value of the taxable property at the time of the taxable event.

House bill

If a trust with an inclusion ratio of greater than zero is severed into two separate trusts, the bill allows the trustee to elect to treat one of the separate trusts as having an inclusion ratio of zero and the other separate trust as having an inclusion ratio of one. To qualify for this treatment, the separate trust with the inclusion ratio of one must receive an interest in each property held by the single trust (prior to severance) equal to the single trust's inclusion ratio, except to the extent otherwise provided by Treasury regulation. The remaining interests in each property will be transferred to the separate trust with the inclusion ratio of zero.

Effective date.—The provision is effective for severances of trusts occurring after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. CLARIFICATION OF WHO IS TRANSFEROR WHERE SUBSEQUENT GIFT BY REASON OF POWER OF APPOINTMENT (SEC. 14632 OF THE HOUSE BILL)

Present law

The exercise or release of a general power of appointment (e.g., a power of withdrawal) generally is treated as a transfer of property by the person who possesses such power (sec. 2514(b)). Under section 2514(e), the lapse of a general power of appointment also is treated as a taxable transfer except to the extent that the power does not exceed the greater of $5,000 or five percent of the fair market value of the property with respect to which the power could have been exercised.

House bill

The House bill clarifies that an individual cannot be treated as a "transferor" with respect to any portion of property with respect to which another person is treated as the "transferor" by reason of the exercise, release or lapse of a general power of appointment with respect to such property.

Effective date.—The provision applies to the exercise, release or lapse of a general power of appointment occurring after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision, because the conferees believe that the House provision reflects present law.

3. TAXABLE TERMINATION NOT TO INCLUDE DIRECT SKIPS (SEC. 14633 OF THE HOUSE BILL)

Present law

A generation-skipping transfer tax ("GST" tax) generally is imposed on transfers to an individual who is in more than one generation below that of the transferor. Transfers subject to the GST tax include direct skips, taxable terminations and taxable distributions. For this purpose, a direct skip is any transfer subject to estate or gift tax of an interest in property to a skip person (sec. 2612(c)(1)). A taxable termination is a termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in trust unless, immediately after such termination, a non-skip person has an interest in the property, or unless at no time after the termination may a distribution (including a distribution upon termination) be made from the trust to a skip person (sec. 2612(a)). A taxable distribution is a distribution from a trust to a skip person (other than a taxable termination or a direct skip) (sec. 2612(b)).

Direct skips are subject to less GST tax than taxable terminations and distributions since the GST tax on direct skips is paid by the transferor (sec. 2603(a)(3)) and, therefore, the tax base for a direct skip is tax exclusive (like the Federal gift tax), while the GST tax on taxable terminations and distributions is paid by the trust or beneficiary (secs. 2603(a) (1) & (2)) and, therefore, the tax base on taxable terminations and distributions is tax inclusive (like the Federal estate tax).

House bill

The House bill provides that, when a transfer is described as both a direct skip and a taxable termination, the transaction will be treated as a direct skip (i.e., treatment as a direct skip takes precedence over treatment as a taxable termination).

Effective date.—Effective for generation skipping transfers occurring after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

XVII. EXCISE TAX SIMPLIFICATION PROVISIONS

A. PROVISIONS RELATING TO DISTILLED SPIRITS, WINES, AND BEER (SECS. 14701–14711 OF THE HOUSE BILL)

Present law

Credit or refund for imported distilled spirits returned bonded premises.—When tax-paid distilled spirits which have been withdrawn from bonded premises of a distilled spirits plant are returned for destruction or redistilling, the excise tax is refunded. This provision does not apply to imported bottled distilled spirits because they are withdrawn from customs custody and not from bonded premises of a distilled spirits plant.

Authority to cancel or credit bonds without submission of records.—Bond generally must be furnished to the Treasury Department when distilled spirits are removed from bonded premises of a distilled spirits plant for exportation without payment of tax. These bonds are canceled or credited when evidence is submitted to the Treasury that the distilled spirits have been exported.

Required maintenance of records on premises of distilled spirits plant.—Distilled spirits plant proprietors are required to maintain records of their production, storage, denaturation, and other processing activities on the premises where the operations covered by the records are carried out.

Transfers from breweries to distilled spirits plants.—Under present law, beer may be transferred without payment of tax from a brewery to a distilled spirits plant to be used in the production of distilled spirits, but only if the brewery is contiguous to the distilled spirits plant.

Requirement that wholesale dealers in liquors post sign.—Wholesale liquor dealers (i.e., dealers, other than wholesale dealers in beer alone) are required to post a sign conspicuously on the outside of their place of business indicating that they are wholesale liquor dealers.

Refund of tax on wine returned to bond.—When unmerchantable wine is returned to bonded production premises, tax that has been paid is returned or credited to the proprietor of the bonded wine cellar to which the wine is delivered.

Use of ameliorating material in certain wines.—Tax law rules govern the extent to which ameliorating material (e.g., sugar) may be added to wines made from high acid fruits and the product still be labeled as a standard, natural wine.

Domestically produced beer for use by foreign embassies, etc.—Distilled spirits, wine, and imported beer may be removed from bond, without payment of tax, for transfer to any customs bonded warehouse for storage pending removal for the official or family use of representatives of foreign governments or public international organizations. No such provision exists under present law for domestically produced beer.

Withdrawal of beer for destruction.—Present law does not specifically permit beer to be removed from a brewery for destruction without payment of tax.

Records of exportation of beer.—Present law provides that a brewer is allowed a refund of tax paid on exported beer upon submission to Treasury Department of certain records indicating that the beer has been exported.

Transfer to brewery of beer imported in bulk.—Imported beer brought into the United States in bulk containers may not be transferred from customs custody to brewery premises without payment of tax. Under certain circumstances, distilled spirits imported into the United States in bulk containers may be transferred from customs custody to bonded premises of a distilled spirits plant where bottling will occur without payment of tax.

House bill

Credit or refund for imported bottled distilled spirits returned to bonded premises.—The House bill conforms the procedures for refunds of tax collected on imported bottled distilled spirits returned to bonded premises to the rules for domestically produced and imported bulk distilled spirits.

Authority to cancel or credit bonds without submission of records.—The House bill authorizes the Treasury Department to permit records of exportation to be maintained by the exporter, rather than requiring submission of proof of exportation to Treasury in all cases.

Repeal of required maintenance of records on premises of distilled spirits plant.—The House bill permits distilled spirits plant proprietors to maintain records of their activities at locations other than the premises where the operations covered by the records are carried out (e.g., corporate headquarters) provided that the records are available for inspection by the Treasury Department during business hours.

Fermented material from any brewery may be received at a distilled spirits plant.—The House bill allows beer to be transferred without payment of tax from a brewery to a distilled spirits plant to be used in the production of distilled spirits, regardless of whether the brewery is contiguous to the distilled spirits plant.

Repeal of requirement that wholesale dealers in liquors post sign.—The House bill repeals the requirement that wholesale liquor dealers post a sign outside their place of business indicating that they are wholesale liquor dealers.

Refund of tax on wine returned to bond not limited to unmerchantable wine.—The House bill repeals the requirement that wine returned to bonded premises be "unmerchantable" in order for tax to be refunded to the proprietor of the bonded wine cellar to which the wine is delivered.

Use of additional ameliorating material in certain wines.—The House bill modifies the wine labeling restrictions to allow any wine made exclusively from a fruit or berry with a natural fixed acid of made exclusively from a fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) to contain a volume of ameliorating material not in excess of 60 percent.

Domestically produced beer may be withdrawn free of tax for use by foreign embassies, etc.—The House bill extends to domestically produced beer the present-law rule which permits other alcoholic beverages to be withdrawn from the place of production without payment of tax for the official or family use of representatives of foreign governments or public international organizations.

Beer may be withdrawn free of tax for destruction.—The House bill permits beer to be removed from a brewery without payment of tax for destruction, subject to Treasury Department regulations.

Authority to allow drawback on exported beer without submission of records.—The House bill repeals the present-law requirement that proof of exportation be submitted to the Treasury Department in all cases as a condition of receiving a refund of tax.

Transfer to brewery of beer imported in bulk without payment of tax.—The House bill extends the present-law rule applicable to distilled spirits imported into the United States in bulk containers to beer imported into the United States in bulk containers.

Effective date.—Beginning 180 days after date of enactment. (The provision deleting the requirement that wholesale liquor dealers post a sign outside their place of business is effective on the date of the bill's enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with a modification deleting the following provisions:

(1) Authority for the Bureau of Alcohol, Tobacco, and Firearms ("BATF") to cancel or credit bonds without submission of records;

(2) Repeal of required maintenance of records on premises of distilled spirits plant;

(3) Repeal of requirement that wholesale dealers in liquors post sign;

(4) Relaxation of rules on use of ameliorating material in certain wines;

(5) Provision allowing domestically produced beer to be withdrawn free of tax for use by foreign embassies; and

(6) Authority for BATF to allow drawback on exported beer without submission of records.

B. CONSOLIDATION OF TAXES ON AVIATION GASOLINE (SEC. 14721 OF THE HOUSE BILL)

Present law

Gasoline used in noncommercial (not for hire) aviation is subject to a 19.4-cents-per-gallon excise tax. 18.4 cents per gallon of this tax is collected when the gasoline is removed from a pipeline or barge terminal. The remaining 1 cent per gallon is imposed at the retail level.

House bill

The House bill consolidates imposition of the aviation gasoline excise tax, with the entire 19.4-cents-per-gallon rate being imposed when the gasoline is removed from a terminal facility.

Effective date.—Sales or uses beginning on or after January 1, 1996.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

C. OTHER EXCISE TAX PROVISIONS

1. AUTHORITY TO GRANT EXEMPTIONS FROM EXCISE TAX REGISTRATION REQUIREMENTS (SEC. 14731 OF THE HOUSE BILL)

Present law

Certain sales for exempt use of articles subject to Federal excise taxes may not be made without payment of tax unless the manufacturer, the first purchaser, and the second purchaser (if any), are all registered under regulations prescribed by the Secretary of Treasury.

House bill

The House bill allows the IRS to provide exemptions from generally applicable excise tax registration requirements for certain classes of taxpayers (rather than only all taxpayers or individually identified taxpayers).

Effective date.—Sales occurring after 180 days after date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. CERTAIN COMBINATIONS NOT TREATED AS MANUFACTURE UNDER RETAIL SALES TAX ON HEAVY TRUCKS (SEC. 14732 OF THE HOUSE BILL)

Present law

A 12-percent excise tax is imposed on the sale of trucks, tractors, and trailers having a gross vehicle weight in excess of specified amounts. The tax is imposed on the first retail sale of a taxable vehicle or addition thereto.

Generally, repairs of used vehicles are treated as remanufacture (giving rise to tax on the entire vehicle) if certain tests are met.

The mere addition of a fifth wheel to a taxable truck is not treated as remanufacture, although the fifth wheel itself would be taxed.

House bill

The House bill clarifies that the following activities do not constitute remanufacture when performed on a used truck or tractor chassis:

(1) removal of a fifth wheel and addition of a power take-off, hoist, and dump body; or

(2) simple addition of a power take-off, hoist, and dump body.

These activities will remain taxable to the extent of the modifications made.

Effective date.—Date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. REPEAL OF EXPIRED EXCISE TAX PROVISIONS (SEC. 14734 OF THE HOUSE BILL)

Present law

Temporary reduction in tax on piggyback trailers

Piggyback trailers and semitrailers sold within the one-year period beginning on July 18, 1984, were permitted a temporary reduction in the retail excise tax rate on trailers.

Expiration of excise tax on deep seabed minerals

The Deep Seabed Mineral Resources Act (Public Law 96-283) imposed an excise tax on certain hard minerals mined on the deep seabed. The tax revenues were intended to fund obligations of the United States under a contemplated Law of the Sea Convention. Because the United States did not sign the treaty, this excise tax never became effective and the tax expired after June 28, 1990.

House bill

The House bill repeals the expired tax reduction for piggy back trailers and the excise tax on deep seabed hard minerals as "deadwood."

Effective date.—Date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

XVIII. ADMINISTRATIVE SIMPLIFICATION PROVISIONS

A. GENERAL PROVISIONS

1. REPEAL OF AUTHORITY TO DISCLOSE WHETHER A PROSPECTIVE JUROR HAS BEEN AUDITED (SEC. 14801 OF THE HOUSE BILL)

Present law

In connection with a civil or criminal tax proceeding to which the United States is a party, the Secretary must disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service (sec. 6103(h)(5)).

House bill

The House bill repeals the requirement that the Secretary disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service.

Effective date.—The provision is effective for judicial proceedings pending on, or commenced after, the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. CLARIFICATION OF STATUTE OF LIMITATIONS (SEC. 14802 OF THE HOUSE BILL)

Present law

Passthrough entities (such as S corporations, partnerships, and certain trusts) generally are not subject to income tax on their taxable income. Instead, these entities file information returns and the entities' shareholders (or beneficial owners) report their pro rata share of the gross income and are liable for any taxes due.

Some believe that, prior to 1993, it may have been unclear as to whether the statute of limitations for adjustments that arise from distributions from passthrough entities should be applied at the entity or individual level (i.e., whether the 3-year statute of limitations for assessments runs from the time that the entity files its information return or from the time that a shareholder timely files his or her income tax return). In 1993, the Supreme Court held that the limitations period for assessing the income tax liability of an S corporation shareholder runs from the date the shareholder's return is filed (*Bufferd v. Comm.*, 113 S. Ct. 927 (1993)).

House bill

The House bill clarifies that the return that starts the running of the statute of limitations for a taxpayer is the return of the taxpayer and not the return of another person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

3. CERTAIN NOTICES DISREGARDED UNDER PROVISION INCREASING INTEREST RATE ON LARGE CORPORATE UNDERPAYMENTS (SEC. 14803 OF THE HOUSE BILL)

Present law

The interest rate on a large corporate underpayment of tax is the Federal short-term rate plus five percentage points. A large corporate underpayment is any underpayment by a subchapter C corporation of any tax imposed for any taxable period, if the amount of such underpayment for such period exceeds $100,000. The large corporate underpayment rate generally applies to periods beginning 30 days after the earlier of the date on which the first letter of proposed deficiency, a statutory notice of deficiency, or a nondeficiency letter or notice of assessment or proposed assessment is sent. For this purpose, a letter or notice is disregarded if the taxpayer makes a payment equal to the amount shown on the letter or notice within that 30-day period.

House bill

For purposes of determining the period to which the large corporate underpayment rate applies, any letter or notice is disregarded if the amount of the deficiency, proposed deficiency, assessment, or proposed assessment set forth in the letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax).

Effective date.—The provision is effective for purposes of determining interest for periods after December 31, 1995.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. CLARIFICATION OF AUTHORITY TO WITHHOLD PUERTO RICO INCOME TAXES FROM SALARIES OF FEDERAL EMPLOYEES (SEC. 14804 OF THE HOUSE BILL)

Present law

If State law provides generally for the withholding of State income taxes from the wages of employees in a State, the Secretary of the Treasury shall (upon the request of the State) enter into an agreement with the State providing for the withholding of State income taxes from the wages of Federal employees in the State. For this purpose, a State is a State, territory, or possession of the United States. The Court of Appeals for the Federal Circuit recently held in *Romero v. United States* (38 F. 3d 1204 (1994)) that Puerto Rico was not encompassed within this definition; consequently, the court invalidated an agreement between the Secretary of the Treasury and Puerto Rico that provided for the withholding of Puerto Rico income taxes from the wages of Federal employees.

House bill

The House bill makes any Commonwealth eligible to enter into an agreement with the Secretary of the Treasury that would provide for income tax withholding from the wages of Federal employees.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

B. TAX COURT PROCEDURES

1. OVERPAYMENT DETERMINATIONS OF TAX COURT (SEC. 14811 OF THE HOUSE BILL)

Present law

The Tax Court may order the refund of an overpayment determined by the Court, plus interest, if the IRS fails to refund such overpayment and interest within 120 days after the Court's decision becomes final. Whether such an order is appealable is uncertain.

In addition, it is unclear whether the Tax Court has jurisdiction over the validity or merits of certain credits or offsets (e.g., providing for collection of student loans, child support, etc.) made by the IRS that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

House bill

The House bill clarifies that an order to refund an overpayment is appealable in the same manner as a decision of the Tax Court. The House bill also clarifies that the Tax Court does not have jurisdiction over the validity or merits of the credits or offsets that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. AWARDING OF ADMINISTRATIVE COSTS (SEC. 14812 OF THE HOUSE BILL)

Present law

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding.

No time limit is specified for the taxpayer to apply to the IRS for an award of administrative costs. In addition, no time limit is specified for a taxpayer to appeal to the Tax Court an IRS decision denying an award of administrative costs. Finally, the procedural rules for adjudicating a denial of administrative costs are unclear.

House bill

The House bill provides that a taxpayer who seeks an award of administrative costs must apply for such costs within 90 days of the date on which the taxpayer was determined to be a prevailing party. The House bill also provides that a taxpayer who seeks to appeal an IRS denial of an administrative cost award must petition the Tax Court within 90 days after the date that the IRS mails the denial notice.

The House bill clarifies that dispositions by the Tax Court of petitions relating only to administrative costs are to be reviewed in the same manner as other decisions of the Tax Court.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

3. REDETERMINATION OF INTEREST PURSUANT TO MOTION (SEC. 14813 OF THE HOUSE BILL)

Present law

A taxpayer may seek a redetermination of interest after certain decisions of the Tax Court have become final by filing a petition with the Tax Court.

House bill

The House bill provides that a taxpayer must file a "motion" (rather than a "petition") to seek a redetermination of interest in the Tax Court.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

4. APPLICATION OF NET WORTH REQUIREMENT FOR AWARDS OF LITIGATION COSTS (SEC. 14814 OF THE HOUSE BILL)

Present law

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding. A person who substantially prevails must meet certain net worth requirements to be eligible for an award of administrative or litigation costs. In general, only an individual whose net worth does not exceed $2,000,000 is eligible for an award, and only a corporation or partnership whose net worth does not exceed $7,000,000 is eligible for an award. (The net worth determination with respect to a partnership or S corporation applies to all actions that are in substance partnership actions or S corporation actions, including unified entity-level proceedings under sections 6226 or 6228, that are nominally brought in the name of a partner or a shareholder.)

House bill

The House bill provides that the net worth limitations currently applicable to individuals also apply to estates and trusts. The House bill also provides that individuals who file a joint tax return shall be treated as one individual for purposes of computing the net worth limitations. Consequently, the net worths of both spouses are aggregated for purposes of this computation. An exception to this rule is provided in the case of a spouse otherwise qualifying for innocent spouse relief.

Effective date.—The provision applies to proceedings commenced after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

C. AUTHORITY FOR COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES (SEC. 14821 OF THE HOUSE BILL)

Present law

The IRS is generally not authorized to provide services to non-Federal agencies even if the cost is reimbursed (62 Comp. Gen. 323, 335 (1983)).

House bill

The House bill provides that the Secretary is authorized to enter into cooperative agreements with State tax authorities to enhance joint tax administration. These agreements may include (1) joint filing of Federal and State income tax returns, (2) single processing of these returns, and (3) joint collection of taxes (other than Federal income taxes).

The House bill provides that these agreements may require reimbursement for services provided by either party to the agreement. Any funds appropriated for tax administration may be used to carry out the responsibilities of the IRS under these agreements, and any reimbursement received under an agreement would be credited to the amount appropriated.

No agreement may be entered into that does not provide for the protection of confidentiality of taxpayer information that is required by section 6103.

Effective date.—The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

XIX. PUBLIC DEBT PROVISIONS

1. PUBLIC DEBT REDUCTION TRUST FUND (SECS. 6341 AND 6343 OF H.R. 1215)

Present law

The Presidential Election Campaign Fund (“Campaign Fund”) provides for public financing of a portion of qualified Presidential election campaign expenditures and certain convention costs (sec. 9001 et seq.) The Campaign Fund is financed through the voluntary designation by individual taxpayers on their Federal income tax returns of $3 of tax liability, which is commonly known as the Presidential election campaign checkoff (sec. 6096). This checkoff can be made only by individuals (not corporations) and does not affect the individual’s tax liability. The Treasury Department accumulates revenues in the Campaign Fund over a four-year period and then disburses funds to eligible candidates for President, Vice President, and conventions during the Presidential election year.

Individuals who itemize deductions (as well as corporations) are allowed a deduction, subject to certain limitations, for contributions made to qualified charitable organizations or to Federal, State, and local governments. Instructions to IRS income tax forms inform taxpayers that they may make a gift to the Federal Government to reduce the public debt by enclosing with their return a separate check made payable to the “Bureau of Public Debt.” In addition, various public laws provide that contributions to specific Federal entities or programs are regarded as gifts to the United States. Such contributions to the Bureau of Public Debt and to specific Federal entities or programs are deductible if the donor itemizes deductions for the year in which the contribution is made.

House bill

Under the House bill, individual taxpayers will be allowed to designate an amount up to 10 percent of their Federal income tax liability for a taxable year to be earmarked to reduce the Federal public debt. Such a designation may be made only at the time the taxpayer files his or her income tax return for a particular taxable year. An individual’s decision whether or not to make a designation under the provision will not affect his or her tax liability. If an individual has no Federal income tax liability for a taxable year—i.e., the individual owes no Federal income tax after claiming allowable credits (other than the EITC) and any designation to the Presidential Election Campaign Fund—then such individual will not be allowed to make a designation to reduce the Federal debt on his or her return for that year.

Under the House bill, amounts earmarked by taxpayers to reduce the public debt will be transferred into a Public Debt Reduction Trust Fund, which will be used only to retire or purchase Federal securities (other than obligations held by the Social Security Trust Fund, the Civil Service Retirement and Disability Fund, and the Department of Defense Military Retirement Fund). Related provisions (contained in another section of the House bill) require either specific spending cuts or an across-the-board sequestration in Federal spending (with certain exceptions) to match the amounts designated by taxpayers for debt reduction.

Effective date.—The provision is effective for taxable years ending after the date of enactment, and will remain in effect until the entire outstanding Federal public debt is retired.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

2. INCREASE IN THE PUBLIC DEBT LIMIT (SEC. 13801 OF THE HOUSE BILL AND SEC. 7471 OF THE SENATE AMENDMENT)

Present law

The statutory limit on the public debt currently is $4.9 trillion.

House bill

The House bill increases the statutory limit on the public debt to $5.5 trillion.

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.

XX. Adjustment to Contract With America Tax Relief Act (Sec. 19002 of the House Bill)

Present law

No provision.

House bill

In order to bring the budget reconciliation bill into compliance with the budget resolution, the House bill generally provides various adjustments to the provisions of the Contract With America Tax Relief Act of 1995. (Title VI of H.R. 1215, as passed by the House, with certain modifications, and incorporated in the House bill by reference.)

In general, the effects of the changes in income and estate tax liability occurring as a result of the provisions of the Contract With America Tax Relief Act would be changed by 27 percent, with the following exceptions.

In the case of capital gains, the benefit of the corporate rate reduction on, and the individual deduction for, capital gain income would be reduced by 15 percent for 1995 and by 31 percent for 1996 and thereafter. In the case of the indexing of the basis of capital assets, the adjustment to basis would be reduced by 31 percent for 1996 and thereafter.

In the case of American Dream Savings accounts, taxpayers would be entitled to 69 percent of the benefits of the American Dream Savings accounts to which they otherwise are entitled

In the case of the alternative minimum tax, after 1994, depreciation would no longer be treated as a preference item in the case of individuals and the alternative minimum tax rate applicable to corporations would be zero. The effects of this modification would be suspended for taxable years beginning in 1995 and 1996. Thus, for the first three taxable years beginning after 1996, taxpayers would be entitled to a refund equal to ⅓ of the amount of minimum tax paid by corporations and the amount of minimum tax liability attributable to depreciation in the case of individual taxpayers for taxable years beginning in 1995 and 1996.

The provisions relating to neutral cost recovery would be deleted.

Effective date.—Date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill provision.

XXI. TRADE PROVISIONS

A. TECHNICAL CORRECTIONS AND MISCELLANEOUS TRADE PROVISIONS

Present law

1. Section 642(c) of the Customs Modernization Act provides for interest accrual on entries from the date of deposit to the date of liquidation or reliquidation. Under this authority, interest is collected or refunded, as appropriate. Section 642 of the Customs Modernization Act does not include an effective date.

2a. Section 509(a) of the Tariff Act of 1930 provides the U.S. Customs Service the authority to examine books and summon witnesses in its investigations and inquiries.

2b. Section 7 of the Tariff Act of 1930 requires certificates of importation for alcoholic beverages on small vessels.

2c. Section 434 of the Tariff Act of 1930 requires every vessel entering the U.S. to present a manifest in compliance with Customs regulations.

2d. Section 484(a)(1) of the Tariff Act of 1930 provides requirements for the entry of merchandise.

2e. Section 592 of the Tariff Act of 1930 provides rules for the imposition of penalties for fraud, negligence, and gross negligence.

2f. Section 592(d) of the Tariff Act of 1930 provides for the restoration of lawful duties if the U.S. has been deprived of such in the event of a violation.

2g. Section 401 of the Tariff Act of 1930 provides miscellaneous definitions and section 508 of the Tariff Act of 1930 provides the requirements, time periods and limitations for recordkeeping related to importing.

2h. Section 504 of the Tariff Act of 1930 provides for limitations on liquidation of entries.

2i. Section 321(a)(2)(B) of the Tariff Act of 1930 originally applied to returning residents arriving from foreign countries other than the insular possessions but, due to a split in tariff classification numbers, the tariff numbers applicable to returning residents arriving from a foreign country were inadvertently dropped.

2j. Section 631(a) of the Tariff Act of 1930 provides for the use of private collection agencies to recover indebtedness arising under the customs laws and owed to the U.S.

2k. Section 509 of the Tariff Act of 1930 provides Customs with the authority to examine books and summon witnesses in its investigations and inquiries.

2l. Section 515 of the Tariff Act of 1930 provides for reviews of protests, administrative review, modifications of decisions, and requests for accelerated dispositions.

3. Section 111(b) of the Customs and Trade Act of 1990 provides that, in the case of agricultural products of the United States processed and packed in foreign trade zones, the ad valorem merchandise processing fee (MPF) shall be applied solely to the value of the foreign material used to make the container; it exempts the value of the domestic agricultural products from the MPF. The U.S. Customs Service has ruled that, for all products not covered by this provision and in the absence of an express provision to the contrary, the MPF would be assessed on both the domestic and foreign value of the merchandise entering from foreign trade zones.

4. Subsection (b) of section 484H of the Customs and Trade Act of 1990 provides for the transportation in bond of Canadian lottery material.

5. Section 213(h) of the Caribbean Basin Economic Recovery Act (CBERA) and section 204(c)(1) of the Andean Trade Preference Act (ATPA) provide for duty reductions on certain handbags, luggage, flat goods, work gloves, and leather wearing apparel.

6. Section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) authorizes the Customs Service to provide reimbursable services to air couriers operating in express consignment carrier facilities and in centralized hub facilities. Customs has interpreted the present statute to prevent Customs from providing reimbursable services to centralized hub facilities during daytime hours.

7. Section 313(r) of the Tariff Act of 1930 requires that a drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within three years after the date of exportation or destruction of the articles on which a drawback is claimed. Customs has no discretion to extend the deadline.

8. Sections 514 and 520 of the Tariff Act of 1930 provide for protests against decisions of the Customs Service, and refunds and errors, respectively.

9. Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States provides for temporary reductions in rates of duty. Heading 9902.98.04 provides for the duty-free entry of the

personal effects, equipment and other materials of participants in, officials of, or accredited members of delegations to world athletic events including the XXVI Summer Olympiad and the 1996 Atlanta Paralympic Games.

10a. Section 313(s)(2)(B) of the Tariff Act of 1930 provides that a drawback successor may designate imported merchandise or certain other merchandise for which the successor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise, a certificate of delivery transferring the merchandise to the successor.

10b. Section 301(c)(4) of the Trade Act of 1974 provides the authority for the United States Trade Representative to carry out mandatory and discretionary trade actions under section 301 of the Trade Act of 1974.

11. Section 405(b) of the Uruguay Round Agreements Act provides the authority for the President to impose a duty with respect to a special safeguard agricultural good.

12. General Note 6 of the Harmonized Tariff Schedule of the United States provides guidelines for those articles eligible for duty-free treatment pursuant to the Agreement on Trade in Civil Aircraft.

13. Section 484E(b)(2)(B) of the Customs and Trade Act of 1990 provides for a temporary exemption from duties imposed on the foreign repair of vessels.

14. Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 provides for limitations on the collection of fees for Customs services.

15. Subheading 2933.90.02 of the Harmonized Tariff Schedule of the United States provides for the entry of heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts.

16. Section 304 of the Tariff Act of 1930 requires that, with certain exceptions, every article of foreign origin imported into the United States, or its container, must be marked with the country of origin of the article.

17. Section 514 of the Tariff Act of 1930, as amended, outlines rules for protest against decisions of the Customs Service.

18. The Uruguay Round Agreements Act amended section 310 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, to extend a revised "Super 301" procedure to review trade expansion priorities and identify priority foreign practices for the year 1995.

House bill

1. Section 12001 of the House bill amends section 505(c) of the Tariff Act of 1930 to provide an exemption for interest accrual on duty paid or owed where an entry is liquidated or reliquidated due to an importer's claim for preference tariff treatment under the NAFTA. Further, the House bill amends section 642 to provide that this section is effective for claims made on or after April 25, 1995.

2a. Section 12002(a) amends section 509(a)(2) of the Tariff Act of 1930 to make a technical correction to a citation.

2b. Section 12002(b) repeals section 7 of the Tariff Act of 1930, which is an obsolete statute.

2c. Section 12002(c) amends section 431(c)(1) of the Tariff Act of 1930 to clarify that section 434 refers to vessel manifests and does not include any other types of manifests.

2d. Section 12002(d) amends section 484(a)(1) of the Tariff Act of 1930 to delete an obsolete statutory reference regarding the requirements for the entry of merchandise.

2e. Section 12002(e) amends section 592 of the Tariff Act of 1930 to replace references to "lawful duties" with "lawful duties, fees and taxes," as appropriate in order to recognize that Customs collects fees and taxes, as well as duties.

2f. Section 12002(f) amends section 592(d) of the Tariff Act of 1930 to require the restoration of duties, fees, and taxes if the U.S. was deprived of any duties, fees, or taxes.

2g. Section 12002(g) amends sections 401(s) and 508(c)(1) of the Tariff Act of 1930 to clarify that a reconciliation should be treated as an entry for purposes of recordkeeping laws. Thus, records pertaining to reconciliation should be retained for a period of five years from the date of filing of the reconciliation.

2h. Section 12002(h) amends section 504(d) of the Tariff Act of 1930 to ensure that an entry whose liquidation is suspended is not liquidated when the suspension is removed where an extension of liquidation is issued.

2i. Section 12002(i) amends section 321(a)(2)(B) of the Tariff Act of 1930 to allow Customs to apply administrative exemptions to returning residents arriving from foreign countries other than insular possessions.

2j. Section 12002(j) amends section 631(a) of the Tariff Act of 1930 to clarify that compensation paid to debt collection agencies applies to debts owed to Customs.

2k. Section 12002(k) amends section 509(b) of the Tariff Act of 1930 to delete "appropriate regional commissioner" and substitute "officer designated pursuant to regulations."

2l. Section 12002(l) amends section 515(d) of the Tariff Act of 1930 to delete "district director" and substitute "port director."

3. Section 12003 amends section 111(b) of the Customs and Trade Act of 1990 and section 13031(b)(8) of the Consolidated Omnibus Reconciliation Act of 1985 to clarify that the MPF is to be applied only to the foreign value of merchandise entered from a foreign trade zone. Further, the House bill provides that the provision made by section 111(b)(2)(D)(iv) of the Customs and Trade Act of 1990 regarding the application of the MPF to processed agricultural products will also apply to all entries for which liquidation has not been finalized from foreign trade zones.

4. Section 12004 amends subsection (b) of section 484H of the Customs and Trade Act of 1990 to replace the phrase "entered or withdrawn from warehouse for consumption" in the "Effective Date" section with "entered for transportation in bond." This is necessary to clarify that Canadian lottery material is not entered into the U.S. for consumption.

5. Section 12005 amends section 213(h)(1) of the CBERA and 204(c)(1) of the ATPA to clarify that, effective 15 days after the date of enactment, the duty reductions specified in these sections do not apply to such articles made of textiles and subject to textile agreements.

6. Section 12006 amends section 13031(b)(9)(A) of the COBRA to clarify that Customs may provide daytime reimbursable services to centralized hub facilities during daytime hours. The provision also clarifies that Customs may be reimbursed for all services related to the determination to release cargo, and not just "inspectional" services. These services are reimbursable regardless of whether or not they are performed on site.

7. Section 12007 amends section 313(r) of the Tariff Act of 1930 to permit a one-year extension for filing drawback claims in cases where the President has declared a major disaster on or after January 1, 1994, and the claimant files a request for such extension with the Customs Service within one year from the date the claim is filed.

8. Section 12008 provides for the liquidation or reliquidation of certain entries in accordance with an administrative review by the International Trade Administration. The bill provides that any amounts owed by the United States pursuant to the liquidation or reliquidation of these entries shall be paid within 90 days after such liquidation or reliquidation.

9. Section 12009 adds subheading 9902.98.05 to provide for the duty-free entry of the personal effects, equipment and other materials of participants in, officials of, or accredited members of delegations to the 1998 Goodwill Games.

10. Section 12010 amends 313(s)(2)(B) of the Tariff Act of 1930 and section 301(c)(4) of the Trade Act of 1974 (19 U.S.C. 2411(c)(4)) to make technical corrections to language in the provisions.

11. Section 12011 amends section 405(b) of the Uruguay Round Agreements Act to make a technical correction to a citation.

12. Section 12012 amends General Note 6 of the Harmonized Tariff Schedule of the United States to allow for the electronic filing of civil aircraft parts certifications.

13. Section 12013 amends section 484E(b)(2)(B) of the Customs and Trade Act of 1990 to extend the temporary exemption for those entries made after December 31, 1992 and before January 1, 1995.

14. Section 12014 amends section 13031(b) of the COBRA to clarify the application of section 521 of the North American Free Trade Agreement Implementation Act to provide for the collection of fees only one time in the course of a single voyage for a passenger aboard a commercial vessel.

15. Section 12015 amends subheading 2933.90.02 of the Harmonized Tariff Schedule of the United States to strike Quizalofop-ethyl.

16. Section 12016 amends section 304 of the Tariff Act of 1930 to exempt certain metal forgings for hand tools, coffee products, teas and spices from country of origin marking requirements.

17. Section 12017 instructs the Customs Service to treat the re-entry of a single entry of four warp-knitting machines from Venezuela as a duty-free entry, and to refund any duties, with interest, which the company has paid as a result of the improper classification.

18. Section 12018 extends Super 301 (section 310 of the Trade Act of 1974), in its revised form, through the year 2000.

Senate amendment

No provision.

Conference agreement

The House recedes.

B. GENERALIZED SYSTEM OF PREFERENCES

1. BASIC AUTHORITY (SEC. 501)

Present law

Title V of the Trade Act of 1974, as amended, (Generalized System of Preferences) grants authority to the President to provide duty-free treatment on imports of eligible articles from designated beneficiary developing countries (BDCs), subject to certain conditions and limitations. Section 505(a) of the Trade Act of 1974 provides that no duty-free treatment under Title V shall remain in effect after July 31, 1995.

House bill

The House bill amends section 505(a) of the Trade Act of 1974 to authorize an extension through December 31, 1997. It also provides that, notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry a) of any article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on July 31, 1995, and b) that was made after July 31, 1995, and before the enactment of this Act, shall be liquidated or reliquidated as free of duty and the Secretary of Treasury shall refund any duty paid, upon proper request filed with the appropriate customs officer, within 180 days after the date of enactment.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment to authorize an extension of the Generalized System of Preferences (GSP) through December 31, 1996.

2. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES

Present law

Section 502 sets forth both the procedures for designating countries as Beneficiary Developing Countries (BDCs) and the conditions of such designation. This section establishes conditions for designation which are mandatory and others which are discretionary. With regard to mandatory conditions, the President is prohibited from designating any country for GSP benefits which is a developed country listed in 502(b).

House bill

The House bill amends the definition of country to include "any territory" and deletes the reference in 502(b) to Austria, Finland, and Sweden which are now European Union Member states.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

3. MANDATORY CONDITIONS

Present law

Under section 502(c) the President is prohibited from designating as a BDC a country which:

(1) is a Communist country, unless (a) its products receive non-discriminatory most-favored-nation (MFN) treatment, (b) it is a GATT Contracting Party and a member of the International Monetary Fund (IMF), and (c) it is not dominated or controlled by international communism;

(2) is an OPEC member, or a party to another arrangement, and participates in an action the effect of which is to withhold supplies of vital commodity resources from international trade or raise their price to an unreasonable level and to cause disruption of the world economy, subject to trade agreement exemptions consistent with objectives under the Trade Act of 1974;

(3) affords "reverse preferences" having or likely to have a significant adverse effect on U.S. commerce, unless the President receives satisfactory assurances of elimination before January 1, 1976;

(4) has nationalized or expropriated U.S. property, or taken similar actions, unless compensation is made, being negotiated, or in arbitration;

(5) fails to recognize as binding or enforce arbitral awards in favor of U.S. citizens;

(6) aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism;

(7) has not taken or is not taking steps to afford internationally recognized worker rights to its workers.

House bill

The House bill retains present law, except, with respect to mandatory conditions: in (1)(b), replace "is a GATT contracting party" with "is a Member of the World Trade Organization."; in (2), delete the reference to OPEC member and the exemption authority; in (3), delete the satisfactory assurances exemption for reverse preferences.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

4. DISCRETIONARY CRITERIA

Present law

Under section 502(c) the President must take into account a list of factors in determining whether to designate a country a BDC, including the extent to which the country is providing adequate and effective intellectual property protection.

House bill

The House bill substitutes "whether or not" for "the extent to which" in the intellectual property rights criterion, and clarifies that such protection may not be provided notwithstanding compliance with the Uruguay Round TRIPs Agreement. The bill also adds new discretionary criteria for country designation. In determining whether to designate any country as a beneficiary developing country under this title, the President must take into account the extent to which such country fails to cooperate with the United States in preventing the proliferation of nuclear weapons, nuclear weapons components, and nuclear weapons delivery systems and in preventing illegal drug trafficking.

Senate amendment

No provision.

Conference agreement

The House recedes.

5. GRADUATION OF BDCS

Present law

Countries are graduated from GSP eligibility if the per capita GNP of any BDC for any year exceeds a dollar limit ($11,800 in 1994), indexed annually under a formula from $8,500 in 1984. When the income level reaches this amount, such country is subject to a 25, rather than 50, percent competitive need import share limit on all eligible articles for up to the following two years. After that time, the country is no longer treated as a BDC.

House bill

Under the House bill, if the President determines that a beneficiary developing country has become a "high income" country as designated by the World Bank (about $8,600 per capita GNP in 1993), the President would be required to remove the country from eligibility under the program. The bill would eliminate the 25 percent competitive need limit during the two-year phase-out period.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

6. DESIGNATION OF ELIGIBLE ARTICLES

Present law

Under Section 503 the President may not designate any article as GSP eligible within the following categories of import-sensitive articles:

1. textile and apparel articles which are subject to textile agreements;
2. watches, except watches entered after June 30, 1989 that the President determines will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or U.S. insular possessions;
3. import-sensitive electronic articles;
4. import-sensitive steel articles;
5. footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not GSP eligible articles on April 1, 1984;
6. import-sensitive semi-manufactured and manufactured glass products; and
7. any other articles the President determines to be import-sensitive in the context of GSP.

House bill

The House bill retains all provisions of present law, except, with respect to changes in the following statutory exemptions: in (1), it replaces the present provision with exemption of textile and apparel articles which were not GSP eligible on January 1, 1994; in (2), it deletes statutory exemption for watches; in (5), it applies exemption to footwear and related articles which were not GSP eligible on January 1, 1995.

The House bill also prohibits consideration of an article for designation of eligibility for three years following formal consideration and denial of that article. Further, the House bill provides specific authority for the President to designate any article that is the growth, product, or manufacture of a least-developed developing country (LDDC) as an eligible article with respect to imports from LDDCs, if the President determines such an article is not import-sensitive in the context of imports from LDDCs. This authority does not apply to statutorily exempt articles. LDDC designations are to be based upon the overall statutory considerations and discretionary designation criteria.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment to preserve the statutory exemption for watches in current law.

7. LIMITS ON PREFERENTIAL AUTHORITY

Present law

Under Section 504 of the Trade Act of 1974, the President may withdraw, suspend, or limit GSP duty-free treatment with respect to any article or any country, after considering the overall GSP and discretionary BDC designation factors. The President shall withdraw or suspend the BDC designation of any country if he determines that, as a result of changed circumstances, the country would be barred from designation.

House bill

The House bill adds a requirement that, except in exceptional circumstances, the President may not take action to withdraw, suspend, or terminate or limit GSP treatment with respect to any country without first providing a period for the submission of public comments.

Senate amendment

No provision.

Conference agreement

The House recedes.

8. COMPETITIVE NEED LIMITS

Present law

Whenever the President determines that exports by any BDC to the United States of a GSP eligible article during any year—

1. exceed a dollar limit ($114 million in 1994) based on $25 million adjusted annually relative to changes in the U.S. GNP since 1974, or
2. equal or exceed a 50 percent share of the total value of U.S. imports of the article, then, no later than July 1 of the next year, such country is NOT treated as a BDC with respect to such article.

Not later than January 4, 1987, and periodically thereafter, the President must conduct a general review of eligible articles and, if he determines that a BDC has demonstrated a sufficient degree of competitiveness relative to other BDCs on any eligible article, then a lower competitive need dollar limit ($41.9 million in 1993, indexed annually from 1984 base) and 25 percent total import share limit apply.

House bill

The House bill reduces the basic competitive need limit to $75 million for any year beginning January 1, 1996, and substitutes a standard annual increase of $5 million for the indexing formula in current law. The House bill preserves the 50 percent market share competitive need limit. The House bill deletes the general review requirements and lower limits.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

9. AUTHORITY TO WAIVE COMPETITIVE NEED LIMITS

Present law

The President may waive the dollar and import share competitive need limits on any eligible article of any BDC if he (1) receives International Trade Commission (ITC) advice on the likely effect of the waiver; (2) determines, based on the overall GSP and discretionary country designation considerations and the ITC advice, that the waiver is in the U.S. national economic interest; and (3) publishes the determination in the Federal Register.

The import share competitive need limit may be disregarded if total U.S. imports of the eligible article during the preceding year do not exceed a de minimis amount of $5 million adjusted annually ($13.4 million in 1994) according to changes in U.S. GNP since 1979. The import share limit does not apply to any eligible article that was not produced in the United States as of January 3, 1985.

House bill

The House bill retains the present waiver authority and updates January 3, 1985 for no U.S. production to January 1, 1995. The House bill also retains the de minimis import provision, but substitutes $13 million in 1995 and a standard annual increase of $500,000 beginning January 1, 1996 for the indexing formula in current law. Further, the House bill provides for the refund of duties paid on buffalo leather from Thailand during the month of July 1995.

Senate amendment

No provision.

Conference agreement

The Senate recedes, with an amendment to strike the refund of duties paid on buffalo leather from Thailand.

10. OTHER PROVISIONS OF CURRENT LAW

Present law

Under section 504(c)(3)(D) of the Trade Act of 1974, the President may not exercise the competitive need waiver authority in any year on imports of eligible articles exceeding:

1. 30 percent of total GSP duty-free imports during the preceding year, or
2. 15 percent of total GSP duty-free imports during the preceding year from BDCs which had (a) a per capita GNP of $5,000 or more, or (b) exported to the United States more than 10 percent of total GSP duty-free imports during that year.

The President may waive competitive need limits in certain cases where there has been a historical preferential trade relationship between the United States and that country.

Appropriate U.S. agencies must assist BDCs to develop policies to assure that their agriculture sectors are not directed to export markets to the detriment of foodstuff production for their citizens.

House bill

The House bill deletes provisions in current law regarding waiver trade limits, historical preferences, and agriculture production.

Senate amendment

No provision.

Conference agreement

The House recedes.

C. TRADE ADJUSTMENT ASSISTANCE PROGRAMS

MODIFICATION OF TRADE ADJUSTMENT ASSISTANCE

Present Law

Title II of the Trade Act of 1974 authorizes Trade Adjustment Assistance (TAA) programs for workers and firms adversely affected by increased imports. Eligibility of workers and firms is certified by the Employment and Training Administration (ETA) of the Department of Labor, and the Economic Development Administration (EDA) of the Department of Commerce, respectively.

Subchapter D of chapter 2 of Title II of the Trade Act of 1974 establishes TAA programs for workers adversely affected by increased imports or production relocation associated with the implementation of the North American Free Trade Agreement (NAFTA).

Workers certified by the Secretary of Labor for approved training qualify for Trade Adjustment Allowance (TRA) payments, following their exhaustion of unemployment insurance (UI) benefits, equal to their weekly UI amount for up to 52 weeks of UI and TRA combined. Workers may receive an additional 26 weeks of TRA benefits to complete approved training. Workers must enter training unless a waiver is granted by the Secretary of Labor where it is not feasible or appropriate to approve a training program.

Certified workers under NAFTA-related TAA receive training allowances in the same manner and to the same extent as workers under general TAA. However, certified workers must enroll in a training program within six weeks of certification, and the Secretary of Labor may not waive training requirements. Under both general TAA and NAFTA-related TAA, certified workers may receive job search and relocation allowances.

The "cap" on payments for training under general worker TAA for any fiscal year is $80 million, except for fiscal year 1997, during which the "cap" is $70 million. Under the NAFTA-related programs, the "cap" on payments for training for any fiscal year is $30 million.

Under TAA for firms, the Commerce Department provides eligible firms with technical assistance to prepare and implement economic adjustment plans, or for industry-wide assistance through twelve regional Trade Adjustment Assistance Centers (TAACs).

Appropriations for TAA for workers and TAA for firms are authorized through fiscal year 1998. These programs and NAFTA-related TAA programs terminate after fiscal year 1998.

House bill

Section 12201 of the House bill amends general TAA so that waivers of the training requirement may be granted only where a training program is not available. The effective date for this provision is October 1, 1996. The House bill also eliminates relocation allowances for both general TAA and NAFTA-related TAA eligible workers. The effective date for this provision is October 1, 1996. Lastly, the House bill would extend authorization of appropriations for general TAA for workers and TAA for firms through fiscal year 2000, after which the programs terminate. NAFTA-related TAA is authorized through fiscal year 1998 as under present law. No benefits may be granted under either the general worker TAA programs or TAA for firms after September 30, 2000.

Senate amendment

No provision.

Conference agreement

The House recedes.

TITLE XII—TEACHING HOSPITALS AND GRADUATE MEDICAL EDUCATION; ASSET SALES; WELFARE; AND OTHER PROVISIONS

SUBTITLE A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

1. OBJECTIVES

Present law

To provide for the general welfare by . . . enabling the several States to make more adequate provision for . . . dependent children . . . (Social Security Act, 1935).

House bill

To restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

Senate amendment

To enhance support and work opportunities for families with children, reduce welfare dependence, and control welfare spending.

Conference agreement

The conference agreement follows the House bill and the Senate amendment as follows: To restore the American family, enhance support and work opportunities for families with children, reduce out-of-wedlock pregnancies, reduce welfare dependence, and control welfare spending.

2. SHORT TITLE

Present law

Not applicable.

House bill

The Personal Responsibility Act of 1995.

Senate amendment

The Work Opportunity Act of 1995.

Conference agreement

The conference agreement follows the House bill and the Senate amendment as follows: The Personal Responsibility and Work Opportunity Act of 1995.

3. SENSE OF THE CONGRESS ON FAMILIES

Present law

No provision.

House bill

It is the sense of the Congress that marriage is the foundation of a successful society, and an essential social institution which promotes the interests of children and society at large. The negative consequences of an out-of-wedlock birth on the child, the mother, and society are well documented. Yet the nation suffers unprecedented and growing levels of illegitimacy. In light of this crisis, the reduction of out-of-wedlock births is an important government interest and the policy contained in provisions of this title address the crisis.

Senate amendment

Congress finds that marriage is the foundation of a successful society and an essential institution that promotes the interests of children. Promotion of responsible fatherhood and motherhood is integral to successful child-rearing and well-being of children. It is the sense of Congress that prevention of out-of-wedlock pregnancy and reduction in out-of-wedlock birth are very important government interests and that the policy contained in provisions of this title is intended to address the crisis.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

4. GRANTS TO STATES FOR NEEDY FAMILIES

A. PURPOSE

Present law

Title IV–A, which provides grants to States for aid and services to needy families with children (AFDC), is designed to encourage care of dependent children in their own homes by enabling States to provide cash aid and services, maintain and strengthen family life, and help parents attain maximum self-support consistent with maintaining parental care and protection.

House bill

Block grants for temporary assistance for needy families (Title IV–A) are established to increase the flexibility of States in operating a program designed to:

(1) provide assistance to needy families so that children may be cared for in their homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting work and marriage; and

(3) discourage out-of-wedlock births.

Senate amendment

Block grants for temporary assistance for needy families (Title IV–A) are established to increase the flexibility of States in operating a program designed to:

(1) provide assistance to needy families with minor children;

(2) provide job preparation and opportunities for such families; and

(3) prevent and reduce the incidence of out-of-wedlock pregnancies, with a special emphasis on teen pregnancies, and establish annual goals for preventing and reducing these pregnancies for fiscal years 1996 through 2000.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. ELIGIBLE STATES; STATE PLAN

Present law

A State must have an approved State plan for aid and services to needy families containing 43 provisions, ranging from single-agency administration to overpayment recovery rules. State plans explain the aid and services that are offered by the State. Aid is defined as money payments. For most parents without a child under age 3, States must provide education, work, or training under the JOBS program to help needy families with children avoid long-term welfare dependence. To receive Federal funds, States must share in program costs. The Federal share of costs (matching rate) varies among States and is inversely related to the square of State per capita income. For AFDC benefits and child care, the Medicaid matching rate is used. This rate now ranges from 50 percent to 79 percent among States and averages about 55%. For JOBS activities, the rate averages 60%; for administrative costs, 50%. In fiscal year 1995, 20 percent of employable (nonexempt) adult recipients must participate in education, work, or training under JOBS, and at least one parent in 50 percent of unemployed-parent families must participate at least 16 hours weekly in an unpaid work experience or other work program. States must restrict disclosure of information to purposes directly connected to administration of the program and to any connected investigation, prosecution, legal proceeding or audit. Each State must offer family planning services to all "appropriate" cases, including minors considered sexually active. States may not require acceptance of these services. States must have in effect an approved child support program. States must also have an approved plan for foster care and adoption assistance. States must have an income and verification system (covering AFDC, Medicaid, unemployment compensation, food stamps, and—in outlying areas—adult cash aid) in accordance with Sec. 1137 of the Social Security Act.

House bill

An "eligible State" is a State that, during the 3-year period immediately preceding the fiscal year, had submitted a plan to the Secretary of HHS for approval. The plan must include:

(1) A written document describing how the State will:

a. conduct a program that provides cash benefits to needy families with children, and provides parents with help in preparing for and obtaining employment and becoming self-sufficient;

b. require at least one parent in a family that has received benefits for 24 months to engage in work activities defined by the State;

c. ensure that parents engage in work activities in accord with section 404;

d. treat interstate immigrants, if their benefits differ from State residents;

e. take such reasonable steps as State deems necessary to restrict use and disclosure of information about recipients;

f. take actions to reduce out-of-wedlock pregnancies, including helping unmarried mothers and fathers avoid subsequent pregnancies and provide care for their children; and

g. reduce teen pregnancy, including through the provision of education and counseling to male and female teens.

(2) Certification by the Governor that the State will operate a child support enforcement program.

(3) Certification by the Governor that the State will operate a child protection program, including a foster care and adoption program.

(4) The Secretary shall determine whether the State plan contains the material required.

Senate amendment

An "eligible State" is a State that annually submits to the Secretary: an outline of its program; a 3-year strategic plan; various certifications on programs offered by the State; and an estimate of State and local expenditures. The detailed requirements of State plan submissions to the Secretary are:

(1) A written document outlining how the State intends to:

a. provide aid to needy families with at least one minor child (or any expectant family); and provide a parent or (other) caretaker in these families with work activities and support services to enable them to leave the program and become self-sufficient;

b. conduct a program designed to serve all political subdivisions;

c. provide a parent or caretaker in such families with work experience, assistance in finding employment, and other work preparation activities and support services that the State considers appropriate to enable such families to leave the program and become self-sufficient;

d. require a parent or caretaker to engage in work, as defined by the State, after 24 months of benefits, or, if earlier, when the State finds the person ready for work (see i. below for community service rule after 3 months of benefits);

e. satisfy the minimum participation rate specified in section 404;

f. treat families with minor children moving into the State; and noncitizens of the U.S.;

g. safeguard and restrict use and disclosure of information about recipients;

h. establish goals and take action to prevent and reduce out-of-wedlock pregnancies, with emphasis on teenage pregnancies; and

i. unless the State opts out by notice to the Secretary, require participation in community service (with hours and tasks set by the State), after 3 months of benefits, by a parent or caretaker not exempt from work requirements (effective 2 years after enactment).

(2) A strategic plan that shall include:

a. a description of the goals of the 3-year strategic plan, including outcome-related goals of, and benchmarks for, program activities;

b. a description of how the above goals and benchmarks will be achieved, or progress made toward them, in the current year;

c. a description of performance indicators to be used in measuring/assessing output service levels and outcomes of activities;

d. information on external factors that could significantly affect attainment of goals and benchmarks;

e. information on a mechanism for conducting program evaluation, for use in comparing results with goals and benchmarks;

f. information on how minimum participation rates specified in section 404 will be satisfied; and

g. an estimate of the total amount of State and local expenditures under the program for the current fiscal year.

(3) Certification that the State will operate a child support enforcement program.

(4) Certification that the State will operate child protection programs, including foster care and adoption programs, under parts B and E.

(5) Certification by the Chief Executive Officer that State will participate during the fiscal year in the income and eligibility verification system (IEVS) required by Section 1137 of Social Security Act.

(6) Certification by the Chief Executive Officer specifying which State agency or agencies will administer and supervise the program and ensuring that local governments and private sector organizations have been consulted about the plan and design of welfare services in the State.

(7) Certification by the Chief Executive Officer that the State shall provide the Secretary with required reports.

(8) Estimate of the total amount of State and local expenditures under the State program for the fiscal year.

(9) The Chief Executive Officer must certify that the State will provide Indians in each tribe that does not have a tribal family assistance plan with equitable access to assistance under the State block grant program.

(10) The State shall make available to the public a summary of the State plan and shall provide a copy to the "approved entity" conducting the audit of State expenditures from the block grant.

Conference agreement

An "eligible State" is a State that once every two years submits to the Secretary an outline of its program and various certifications on programs offered by the State. The detailed requirements of State plan submissions to the Secretary are:

(1) A written document describing how the State will:

a. conduct a program that provides assistance to needy families with children (or families that include a pregnant mother) and provides parents with job preparation, work and support services to enable them to leave the program and become self-sufficient;

b. conduct a program designed to serve all political subdivisions;

c. require a parent or caretaker to engage in work, as defined by the State, after 24 months of benefits, or, if earlier, when the State finds the person ready for work;

d. ensure that families engage in work activities in accord with section 404;

e. treat families moving into the State from another State, if such families are to be treated differently than other families;

f. take such reasonable steps as State deems necessary to safeguard and restrict the use and disclosure of information about recipients;

g. establish goals and take action to prevent and reduce out-of-wedlock pregnancies, with emphasis on teenage pregnancies; and

h. treat noncitizens, if the State and local benefits for which they may be eligible will be different than those available to citizens.

(2) Certification by the chief executive officer that the State operate a child support enforcement program;

(3) Certification by the chief executive officer that the State will operate a child protection program and a foster care and adoption program under part B;

(4) Certification by the chief executive officer specifying which State agency or agencies will administer and supervise the program and ensuring that local governments and private sector organizations have had 60 days to submit comments about the plan and the design of welfare services in the State;

(5) Certification by the chief executive officer that the State will provide Indians in each tribe that does not have a tribal family assistance plan with equitable access to assistance under the program; and

(6) The State shall make available to the public a summary of the State plan.

For purposes of this section, the term "Eligibile State" means, with respect to fiscal year 1996, a State that has submitted to the Secretary the plan described above within 3 months after the date of enactment.

C. PAYMENTS TO STATES

ENTITLEMENTS

Present law

AFDC entitles States to Federal matching funds. Current law provides permanent authority for appropriations without limit for grants to States for AFDC benefits, administration, and AFDC-related child care. Over the years, because of court rulings, AFDC has evolved into an entitlement for individuals to receive cash benefits. In general, States must give AFDC to all persons whose income and resources are below State-set limits if they are in a class or category eligible under Federal rules.

There is no grant increase to reward States that reduce out-of-wedlock births (illegitimacy ratio).

There is no adjustment for population growth. Instead, current law provides unlimited matching funds. When AFDC enrollment climbs, Federal funding automatically rises.

There is no adjustment for emergency assistance (EA) plan amendments. Current law provides unlimited matching funds for EA expenditures.

There is no job placement performance bonus, performance bonus, or high performance bonus.

The law imposes an aggregate ceiling on matching funds for AFDC, adult cash welfare (aged, blind, disabled), and foster care and adoption assistance in Guam, Puerto Rico, the Virgin Islands, and American Samoa (AFDC, foster care, and adoption assistance only). (Sec. 1108 (a) and (d) of the Social Security Act.) The Federal matching rate is 75%, except for adoption assistance and foster care maintenance payments, whose matching rate is 50%. (Note: American Samoa has not implemented AFDC). Separate funding ceilings apply to matching funds for AFDC family planning services (75% Federal) and for Medicaid (50% Federal) in each territory (sec. 1108(b) and (c) of the Social Security Act). The outlying areas listed above are entitled to JOBS matching funds (75% Federal), allocated on the same basis as States (by share of AFDC adult recipients). (Sec. 403(l)(1)(A) of the Social Security Act.)

Indian tribes and Alaska native organizations receive no special treatment regarding AFDC, and tribes and native organizations do not administer AFDC funds. Indian and Alaska families with children receive AFDC benefits on the same terms as other families in their States or from State or local AFDC agencies. More than 80 tribes and native organizations in 24 States are JOBS grantees, having applied to conduct JOBS within 6 months of enactment of the law establishing it. Their allocation of JOBS funds is based on the percentage of AFDC adult recipients within the State who are in the tribal service area. Their JOBS allocation is subtracted from that of their State. JOBS funds granted to Indians and Alaska natives are 100% Federal, requiring no matching. Further, their JOBS programs need not meet participation rules of the regular JOBS program. In fiscal year 1995 the estimated allocation of JOBS funds for these groups totaled $8.9 million.

House bill

Each eligible State is entitled to receive a grant from the Secretary for each of 5 fiscal years (1996–2000) in the amount equal to the State family assistance grant for the fiscal year. There is no individual entitlement (implicit in bill). For each fiscal year beginning with 1998, a State's grant amount is increased by 5 percent if the State illegitimacy ratio is 1 percentage point lower in that year than its 1995 illegitimacy ratio; the State grant is increased 10 percent if the illegitimacy ratio is 2 or more percentage points lower than its 1995 illegitimacy ratio. In 1997, 1998, 1999, and 2000, a State's grant amount is increased by the State's percentage share of national population growth among growing States multiplied by $100 million. States that have negative population growth are omitted from the calculation. The House bill entitles territories to a cash block grant for temporary assistance to needy families (on same basis as States). It repeals AFDC and foster care/adoption assistance (and, accordingly, territorial ceilings for them and for AFDC family planning). (Sec. 104(e)(1) of H.R. 4.) It establishes new separate territorial ceilings for adult cash welfare. The bill retains territorial ceilings for Medicaid, but repeals ceilings for AFDC family planning (along with AFDC itself). As noted, the bill repeals JOBS. The basic cash block grant for outlying areas includes base-year level JOBS funds. Indian tribes and Alaska native organizations receive no special treatment regarding the cash block grant that will replace AFDC. Tribes and native organizations would not administer the new grants. The bill repeals JOBS (sec. 104(c)), and the basic cash block grant includes base-year level JOBS funds of each State (those funds include ones earmarked previously for administration by Indian tribes and Alaska native organizations). Tribes and native organizations would not administer the new grants.

Senate amendment

The Secretary is required to pay each eligible State for each of 5 fiscal years (1996–2000) a grant equal to the State family assistance grant for the fiscal year. The amendment states that no person is entitled to any assistance under Title IV–A. For fiscal years 1998, 1999 and 2000, a State's grant amount is increased if the State illegitimacy ratio is at least 1 percentage point lower than its 1995 illegitimacy ratio and the State rate of "induced pregnancy terminations" is no higher than in 1995. The bonus equals $25 times the number of children in the State in families with income below the poverty line, according to the most recently available Census data. The bonus is $50 per poor child if the illegitimacy ratio is at least 2 percentage points lower and the abortion rate no higher than in 1995. The bonus shall not be paid if the Secretary finds that the illegitimacy ratio declined, or the abortion rate held steady, because of a change in State reporting methods. The amendment authorizes to be appropriated, and appropriates, sums necessary for these grants. For each of fiscal years 1997, 1998, 1999, and 2000, qualifying States shall receive a supplemental grant amount equal to 2.5 percent of the block grant received in the preceding fiscal year. For this purpose, a qualifying State is one with an average level of State welfare spending per poor person in the preceding fiscal year below the national average and with an estimated rate of State population growth above the average growth rate for all States for the most recent fiscal year for which information is available. Additionally, States whose population rose more than 10% from April 1, 1990, to July 1, 1994, are deemed eligible, as are States with a fiscal year 1996 level of State welfare spending per poor person that is less than 35 percent of the national average level. State welfare spending per poor person is defined as the State cash block grant divided by the number of persons in the State who had an income below the poverty line, according to the 1990 decennial census. For these grants, a total of $878 million is authorized to be appropriated, and is appropriated to be spent in 1997, 1998, 1999, and 2000. The Senate amendment makes available up to a total of $800 million for grants for years fiscal year 1996 through fiscal year 2000 equal to increased EA expenditures in fiscal year 1995 attributable to State EA plan amendments made during fiscal year 1994. If this amount is insufficient, State EA adjustment grants are to be reduced proportionately. For each of 2 years (fiscal years 1998 and 1999) the Secretary shall pay a job placement performance bonus to eligible States. This bonus fund shall equal 3% of the national cash block grant for fiscal year 1998 and 4% for fiscal year 1999. The DHHS Secretary shall develop a formula for allocating funds to States on the basis of the number of families who, during the previous year, lost eligibility for continued aid from the cash block grant program because of obtaining unsubsidized employment. The formula must provide a larger bonus for families who remain employed for longer periods or who are at greater risk of long-term welfare enrollment and take into account each State or geographic area's unemployment condition. For fiscal year 2000, the Secretary shall pay a performance bonus to each qualified State. To qualify for a performance bonus, a State must exceed overall average performance of all States in a measurement category (in the time period starting 6 months after enactment and ending on September 30, 1999) or improve its own performance in a category by at least 15% over that of fiscal year 1994. The 5 measurement categories are: reduction in average length of time families receive cash aid, increase in the percentage of recipient families that receive child support payments, increase in the number of families who lose eligibility for continued cash aid as a result of unsubsidized work, increase in earnings of recipient families, and reduction in percentage of families that become re-eligible for cash aid within 18 months after leaving the program. The bonus fund shall equal 5% of the national cash block grant and is to be deducted from that grant (by reducing each State's fiscal year 2000 grant by 5%). For fiscal year 2000, in addition, "high performance" States shall be entitled to a share of a high performance bonus fund. Appropriated for the high performance bonus fund is an amount equal to penalties imposed on States (and "collected" by reductions in State grants) for fiscal years 1996–1999. High performance bonuses will be awarded for each of the 5 measurement categories to the 5 States with the highest percentage of improvement over their fiscal year 94 baseline in the category and to the 5 States with the highest overall average performance in the category. Retains but increases aggregate ceilings in each of the territories for cash aid to needy families, cash aid to needy aged, blind or disabled adults, and foster care/adoption assistance. Ends requirement that territories share cost of cash aid for needy families. Ceilings for Puerto Rico, Guam, and the Virgin Islands would rise by $19.521 million (representing a 12.5 percent increase in the old ceilings, plus $8.446 million for their fiscal year 1994 JOBS funds). Retains territorial ceilings for Medicaid, but repeals ceilings for AFDC family planning (along with AFDC itself). The Senate amendment repeals JOBS, but increases ceilings for the outlying areas to include their base-year level JOBS funds. The Senate amendment allows block grant funds to be directly administered by Indian tribes and Alaska native organizations. The amount is the total of Federal AFDC payments to the State for fiscal year 1994 attributable to Indian families. The Senate amendment requires the DHHS Secretary to continue to pay Indian tribes and Alaska native organizations that have been JOBS grantees an annual grant equal to the amount they received in fiscal year 95 for JOBS for each of fiscal years 1996, 1997, 1998, 1999 and 2000. For this purpose it appropriates $7,638,474 for each year. These funds are separate from, and in addition to, the national cash block grant.

Conference agreement

The conference agreement follows the House bill and the Senate amendment on grants for family assistance, so that each eligible State is entitled to receive a grant equal to the State family assistance grant from the Secretary for each of 5 fiscal years (1996–2000). With respect to the Senate amendment's explicit statement that no person is entitled to any assistance under Title IV–A of the Social Security Act, this provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

The conference agreement follows the House bill with respect to the amount of grant increases to reward states that reduce out-of-wedlock births (namely grant increases of 5% and 10%, based on reductions in illegitimacy). The conference agreement follows the Senate amendment with respect to the determination of how States may qualify for grant increases for this purpose, including the prohibition on a State's receiving a grant increase for this purpose if the State rate of induced pregnancy terminations is higher than in 1995.

For purposes of this part, the Secretary is to disregard changes in rates of illegitimacy due to a change in State methods of reporting such data.

The conference agreement generally follows the Senate amendment with regard to the Adjustment for Population Growth, with the modification that $800 million is authorized and appropriated for this purpose.

The conference agreement follows the House bill regarding the adjustment for Emergency Assistance Plan Amendments.

The conference agreement follows the House bill regarding the Job Placement Performance Bonus.

The conference agreement follows the Senate amendment regarding the Performance Bonus, except that States that are most successful or most improved in moving families off welfare into work may reduce their 75 percent State maintenance of effort requirement by up to 8 percentage points.

The conference agreement follows the House bill regarding the High Performance Bonus.

The conference agreement generally follows the Senate amendment regarding the treatment of outlying areas, with certain modifications to the aggregate ceilings on cash benefits for the specified territories.

The conference agreement generally follows the Senate amendment regarding the treatment of Indian tribes and Alaska native organizations, except that these groups will receive benefits through their State's block grant in fiscal year 1996 and will be eligible to receive separate payments in fiscal year 1997 and thereafter. With regard to the specific provision outlining the purpose of the section providing for direct funding and administration by Indian tribes, this provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

DEFINITIONS

Present law

AFDC law defines "State" to include the 50 States, the District of Columbia, Puerto Rico, Virgin Islands, Guam, and American Samoa. However, special funding ceilings apply to them.

House bill

The "State family assistance grant" is determined by the greater of (1) the average of Federal obligations to the State for selected programs (AFDC benefits and administration, Emergency Assistance, and JOBS) authorized by Title IV–A for fiscal years 1992–1994; or (2) the amount of Federal obligations for fiscal year 1994, multiplied by the total amount of State outlays for these programs for fiscal year 1994, divided by the amount of Federal obligations for fiscal year 1994. The selected programs are all those authorized under Title IV–A of current law except the day care programs (the at-risk program, AFDC/JOBS day care, and transitional day care). If the sum of all the State shares, as calculated here, exceeds (or falls short of) the national block grant amount below ((2)(b)), each State's share will be reduced (or increased) proportionately.

In each fiscal year between 1996 and 2000, the "National Block Grant Amount" available to all eligible States will be equal to $15,390,296,000.

The State's "Illegitimacy Ratio" for a fiscal year is the sum of the number of out-of-wedlock births that occurred in the State during the most recent fiscal year for which the data are available and the amount, if any, by which the number of abortions performed in the State during the most recent year for which information is available exceeds the number of abortions performed in the State during the fiscal year that immediately precedes such most recent fiscal year, divided by the number of births that occurred in the State for the most recent fiscal year.

The term "State" includes the 50 States, the District of Columbia, Puerto Rico, Virgin Islands, Guam, and American Samoa.

Senate amendment

The State share of the block grant for each year equals the total Federal payments to the State under Title IV–A in Fiscal Year 1994 (for AFDC benefits and administration, Emergency Assistance, JOBS, and three child care programs— AFDC/JOBS child care, "transitional" child care, and "at-risk child care"); reduced by any amount set aside for tribal family assistance programs in the State and (fiscal year 2000 only) by 5% (for the performance bonus fund) and increased by the amount, if any, of increased fiscal year 95 Emergency Assistance spending attributable to fiscal year 94 amendments.

The block grant amount is $16,803,769,000.

(Note: A major reason for the difference between the House and Senate block grant amount is that the House removed mandatory child care funds currently authorized under Title IV–A and placed most of the money in a separate discretionary child care block grant, while the Senate kept IV–A child care funds in the cash block grant but earmarked them for child care.)

The term "illegitimacy ratio" means the number of out-of-wedlock births that occurred in the State during the most recent fiscal year for which the data are available, divided by the number of births that occurred in the State during the most recent fiscal year for which the data are available.

The term "State" is identical to the House bill. However, for supplemental grants for population increases, the term "State" applies only to the 50 States.

In general, the terms "Indian," "Indian tribe," and "tribal organization" have the meaning given by section 4 of the Indian Self–Determination and Education Assistance Act (25 U.S.C. 450b). The Senate amendment provides that only 12 specified regional nonprofit corporations of Alaska natives can administer tribal family assistance grants.

Conference agreement

The conference agreement follows the House bill with regard to the State family assistance grant, except that the State share of the block grant is determined by the greater of (1) the average of Federal payments for fiscal years 1992–94; (2) Federal payments in fiscal year 1994; or (3) Federal payments in fiscal year 1995. House conferees recede with regard to the proportionate reduction in State shares included in the House bill. For all programs except JOBS, Federal payments represent the Federal share of a State's total expenditures on these programs, as reported by the States. For JOBS, the payment represents the grant amount.

The conference agreement follows the Senate amendment regarding the definition of a State's Illegitimacy Ratio

The conference agreement follows the House bill and Senate amendment regarding the definition of "State", but the House recedes to the Senate so that, for purposes of the supplemental grants for population increases only, the term "State" applies only to the 50 States and the District of Columbia.

The conference agreement follows the Senate amendment regarding the definition of "Indian."

USE OF GRANT

Present law

AFDC and JOBS funds are to be used in conformity with State plans. A State may replace a caretaker relative with a protective payee or a guardian or legal representative.

Current law sets aside some JOBS funds (deducting them from State allocations) for Indian tribes and Native Alaska organizations. See (4)(C)(1)(f).

Regulations permit States to receive Federal reimbursement funds (50% administrative cost-sharing rate) for operation of electronic benefit systems. To do so, States must receive advance approval from DHHS and must comply with automatic data processing rules.

House bill

States may use funds in any manner reasonably calculated to accomplish the purpose of this part (except for prohibitions listed below under (4)(F)). No part of the grant may be used to provide medical services. Explicitly allowed are noncash aid to mothers under the age of 18 and assistance to low-income households for heating and cooling costs.

The House bill has no set-aside provision.

In the case of families that have lived in a State for less than 12 months, States are authorized to provide them with the benefit level of the State from which they moved.

States may transfer up to 30 percent of the funds paid to the State under this section to any or all of the following: (1) child protection block grant; (2) social services block grant under title XX of the Social Security Act; (3) any food and nutrition block grant passed during the 104th Congress; and (4) the child care and development block grant program. Rules of the recipient program will apply to the transferred funds.

States are allowed to reserve some block grant funds received for any fiscal year for the purpose of providing emergency assistance under the block grant program.

States are encouraged to implement an electronic benefit transfer system for providing assistance under the State program funded under this part, and may use the grant for such purpose. In general, exempts State and local government electronic transfers of need-based benefits from certain rules issued by the Federal Reserve Board regarding electronic fund transfers, (i.e., Regulation E, which limits liability of cardholders).

Senate amendment

States may use funds in any manner reasonably calculated to accomplish the purpose of this part, provided that administrative costs not exceed 15% of the State's grant (except for prohibitions listed below, under section F).

The following rules apply to set-asides under the Senate amendment: (1) maintains current law set-asides for JOBS funding for Indian tribes and Alaska native organizations; (2) from the national cash block grant, the Senate amendment earmarks for child care annually the amount paid with Federal funds in fiscal year 1994 for AFDC-related child care (about $980 million); and (3) for the Performance fund (fiscal year 2000 only), each State's share of the family assistance block grant shall be reduced by 5%. These set-aside funds are to finance fiscal year 2000 performance bonuses.

With regard to the treatment of "interstate immigrants", the Senate amendment includes a similar provision, with slight differences in wording, in relation to the House bill.

States may transfer up to 30 percent of block grant funds to the child care and development block grant program.

A State may reserve amounts paid to the State for any fiscal year for the purpose of providing assistance under this part. Reserve funds can be used in any fiscal year. Any funds set aside for child care, if reserved, must be used only for child care.

States may use a portion of the temporary assistance block grant to make payments (or provide job placement vouchers) to State-approved agencies that provide employment services to recipients of cash aid.

Conference agreement

The conference agreement follows the House bill and Senate amendment with respect to the general uses of the grant, clarifying that the grant may be used in any manner reasonably calculated to increase the flexibility of States in operating a program designed to: (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families.

The conference agreement follows the Senate amendment's 15% cap on administrative spending. However, spending for information technology and computerization needed to implement the tracking and monitoring required by this title are excluded from this limitation.

The conference agreement follows the House bill with regard to set-asides for child care and the performance fund, and follows the Senate amendment with regard to the set-aside for Indians.

It is the intent of the conferees that States be permitted to determine the treatment of interstate immigrants, including whether to provide such persons with benefits equaling those they would have received in their former State, for a period of up to 12 months. A provision specifically authorizing such treatment was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

The conference agreement follows the House bill with regard to transfer of funds.

The conference agreement follows the Senate amendment on reservation of funds. The conference agreement follows the House bill with regard to the Electronic Benefit Transfer System.

The conference agreement follows the Senate amendment on the authority of States to use funds to operate an employment placement program.

COST-SHARING

Present law

Current law requires States to share program costs. For administrative costs the rate is 50%. For other costs it varies among States (and, within limits, is inversely related to the square of State per capita income, compared to the square of national per capita income). For AFDC benefits and AFDC-related child care, the Medicaid Federal matching rate is used; it now ranges among States from a floor of 50% to 79%. For JOBS activities, the law provides an "enhanced" rate, ranging from 60% to 79%.

House bill

No cost-sharing required.

Senate amendment

The Senate amendment requires State cost-sharing (maintenance of effort) for the temporary assistance block grant for 4 years, starting in fiscal year 1997. To receive the full grant for one of these years, States must spend in the preceding year from their own funds under their temporary assistance program at least 80% of the amount they spent in fiscal year 1994 on the replaced programs—AFDC benefits, AFDC-related child care, Emergency Assistance, and JOBS. Grants are to be reduced one dollar for each dollar by which a State falls short of this requirement. Cost-sharing also is required for "contingency" funds and additional child care funds. For contingency funds States must spend at least 100% of fiscal year 1994 expenditures on programs replaced by the cash block grant. For additional child care funds they must spend at least 100% of fiscal year 1994 expenditures on AFDC-related child care.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that States must spend at least 75 percent of the amount they spent in fiscal year 1995.

TIMING OF PAYMENTS

Present law

The Secretary pays AFDC funds to the State on a quarterly basis.

House bill

The Secretary shall make each grant payable to a State in quarterly installments.

Senate amendment

Similar to the House provision.

Conference agreement

The conference agreement follows the House bill.

PENALTIES

Present law

If the Secretary finds that a State has failed to comply with the State plan, she is to withhold all payments from the State (or limit payments to categories not affected by noncompliance).

There is no specific penalty for failure to submit a report, although the general noncompliance penalty could apply.

The Secretary is to reduce payments by 1% for failure to offer and provide family planning services to all appropriate AFDC recipients who request them.

Except as expressly provided, the Secretary may not regulate the conduct of the States or enforce any provisions of this paragraph.

The penalty against a State for noncompliance with child support enforcement rules—loss of AFDC matching funds—shall be suspended if a State submits and implements a corrective action plan.

House bill

The Secretary shall reduce the funds paid to a State by any amount found by audit to be in violation of this part, but the Secretary cannot reduce any quarterly payment by more than 25 percent. If necessary, funds will be withheld from the State's payments during the following year.

The Secretary must reduce by 3 percent the amount otherwise payable to a State for a fiscal year if the State has not submitted the annual report regarding the use of block grant funds within 6 months after the end of the immediately preceding fiscal year. The penalty is rescinded if the report has been submitted within 12 months.

The Secretary must reduce by 1 percent the amount of a State's annual grant if the State fails to participate in the IEVS designed to reduce welfare fraud.

With regard to failure to offer and provide family planning services, there is no penalty specified, but States are allowed to use block grant funds to pay for family planning services.

Except as expressly provided, the Secretary may not regulate the conduct of States under Part A of Title IV or enforce any provision of it.

There is no provision in the House bill regarding overdue repayments to the Federal rainy day loan fund, which is described below.

Senate amendment

For all penalties, the Secretary may not impose any of the penalties if she finds the State had reasonable cause for its failure to comply with the relevant provision. The State must spend on the block grant program a sum of its own funds to equal the amount of withheld Federal dollars. No quarterly payment may be reduced more than 25%. If necessary, penalty funds will be withheld from the State's payment for the next year. Except for the first item, all penalties take effect October 1, 1996.

The Secretary shall reduce funds paid to a State by any amount found by audit to be in violation of this part. If the State does not prove to the Secretary that the unlawful expenditure was not made intentionally, the Secretary shall impose an additional penalty of 5 percent of the basic block grant.

If a State fails to submit the annual report required by sec. 409 within 6 months after the end of a fiscal year, the Secretary shall reduce by 5 percent the amount otherwise payable to the State for the next year. However, the penalty shall be rescinded if the State submits the report before the end of the year in which the report was due.

The Secretary shall reduce by not more than 5 percent the annual grant of a State, if the State fails to participate in the IEVS designed to reduce welfare fraud.

If the Secretary determines that a State does not enforce penalties requested by the Title IV–D child support enforcement agency against recipients of cash aid who fail to cooperate in establishing paternity in accordance with Part D, the Secretary shall reduce the cash assistance block grant by not more than 5 percent.

Except as expressly provided, neither the DHHS Secretary nor the Treasury Secretary may regulate the conduct of States under Part A of Title IV nor enforce any provision of it.

If a State fails to pay any amount borrowed from the Federal Loan Fund for State Welfare Programs within the maturity period, plus any interest owed, the Secretary shall reduce the State's cash assistance block grant for the immediately succeeding fiscal year quarter by the outstanding loan amount, plus the interest owed on it. The Secretary may not forgive these overdue debts.

The Senate amendment requires the Federal government, before assessing a penalty against a State under any program established or modified by the act, to notify the State about the violation and allow it to enter into a corrective compliance plan within 60 days after notification. The Federal government shall have 60 days to accept or reject the plan; if it accepts the plan, and if the State corrects the violation, no penalty shall be assessed. If the State fails to make a timely correction, some or all of the penalty shall be assessed. An alternate corrective action section requires a State to correct the violation pursuant to its plan within 90 days after the Federal government accepts the plan.

Conference agreement

The conference agreement follows the Senate amendment on the general conditions for setting penalties (i.e. penalties may not be imposed if the Secretary finds the State had reasonable cause for its failure to comply; the State must spend on the block grant program a sum of its own funds to equal the amount of withheld Federal dollars; no quarterly payment may be reduced more than 25%; if necessary, penalty funds will be withheld from the State's payment for the next year; and that, except for the first item, all penalties take effect October 1, 1996).

The conference agreement follows the Senate amendment on penalties for use of the grant for unauthorized purposes. The conference agreement follows the House bill and the Senate amendment regarding penalties for State failure to submit the required report, except that the penalty is to be 4 percent. The conference agreement follows the House bill and the Senate amendment regarding penalties for State failure to participate in IEVS, except that the penalty is to be 2 percent.

The conference agreement follows the Senate amendment on penalties for State failure to cooperate on child support enforcement. The conference agreement follows the House bill and the Senate amendment regarding penalties for failure to offer and provide family planning services. The conference agreement includes penalties for failure to satisfy minimum work participation rates. The conference agreement follows the Senate amendment regarding the limitation of Federal authority.

The conference agreement follows the Senate amendment regarding the penalty for failure to timely repay the Federal loan fund for State welfare programs. The conference agreement follows the Senate amendment regarding the Corrective Action Plan.

FEDERAL RAINY DAY LOAN FUND

Present law

No provision. Instead, current law provides unlimited matching funds.

House bill

The Federal government will establish a fund of $1 billion modeled on the Federal Unemployment Account, which is part of the Unemployment Compensation system. The fund is to be administered by the Secretary of Health and Human Services, who must deposit into the fund any principal or interest payments received with respect to a loan made under this provision. Funds are to remain available without fiscal year limitation for the purpose of making loans and receiving payments of principal and interest.

States must repay their loans, with interest, within 3 years. The rate of interest will equal the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan. At any given time, no State can borrow more from the fund than half its annual share of block grant funds or $100 million, whichever is less. States may borrow from the fund if their total unemployment rate for any given 3 month period is more than 6.5 percent and is at least 110 percent of the same measure in the corresponding quarter of the previous 2 years.

Senate amendment

Establishes a $1.7 billion revolving loan fund called the "Federal Loan Fund for State Welfare Programs." The Secretary shall make loans, and the rate of interest will equal the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan. Ineligible are States that have been penalized for misspending block grant funds as determined by an audit. Loans are to mature in 3 years, at the latest, and the maximum amount loaned to a State cannot exceed 10 percent of its basic block grant, and States face penalties for failing to make timely payments on their loan.

Conference agreement

The conference agreement follows the Senate amendment.

CONTINGENCY FUND (FOR STATES WITH HIGH UNEMPLOYMENT)

Present law

No provision. Current law provides unlimited matching funds.

House bill

No provision.

Senate amendment

Establishes a "Contingency Fund for State Welfare Programs" and appropriates funds of up to $1 billion for a total period of 7 years (fiscal year 1996–2002). The fund would provide matching grants (at the Medicaid matching rate) to States that have unemployment rates above specified levels, provided they first spent from their own funds a yearly sum at least equal to their fiscal year 1994 expenditures on AFDC, AFDC-related child care, Emergency Assistance, and JOBS. The maximum contingency grant could not exceed 20 percent of a State's temporary assistance block grant. Eligible would be States that met the maintenance of effort requirement and had an average rate of total unemployment, seasonally adjusted, of at least 6.5 percent during the most recent 3 months with published data and a rate at least 10 percent above that of either or both of the corresponding 3-month periods in the 2 preceding calendar years.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that $800 million is appropriated for this purpose. The provision requiring the Secretary of the Treasury to annually report to Congress on the status of the fund was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

ADDITIONAL DAY CARE FUNDS

Present law

No provision. Current law provides unlimited matching funds for AFDC/JOBS child care and transitional child care (but a capped amount for "at-risk" care).

House bill

No provision.

Senate amendment

The Senate amendment authorizes to be appropriated, and appropriates, $3 billion in matching grants to States for the 5-year period beginning in fiscal year 1996 for child care assistance (in addition to Federal funds set aside for child care in the family assistance block grant). The funds, which are allocated among the States on the basis of their share of the nation's child population, are to be used to reimburse a State, at the Medicaid matching rate, for child care spending in a fiscal year that exceeds its share of child care set-aside funds (100 percent Federal) plus the amount it spent from its own funds in fiscal year 1994 for AFDC/JOBS child care, transitional child care, and at-risk child care. Funds are to be used only for child care assistance under Part IV–A. In the last quarter of the fiscal year, fiscal year 2000, if any portion of a State allotment is not used, the Secretary shall make it available to applicant States. Notwithstanding section 658T of the Child Care and Development Block Grant Act, the State agency administering the family assistance block grant shall determine eligibility for all child care assistance provided under Title IV–A. (For budget scoring, the Amendment states that the baseline shall assume that no grant will be made after fiscal year 2000.)

Conference agreement

See discussion in Subtitle I of the conference agreement under Child Care and Development Block Grant.

D. CONTRACTS/CLIENT AGREEMENTS

TERMS

Present law

After assessing the needs and skills of recipients and developing an employability plan, States may require JOBS participants to negotiate and enter into an agreement that specifies their obligations.

House bill

No provision.

Senate amendment

States must assess, through a case manager, the skills of each parent for use in developing and negotiating a personal responsibility contract (PRC). Each recipient family must enter into a contract developed by the State or into a limited benefit plan. The PRC means a binding contract outlining steps to be taken by the family and State to get the family "off of welfare" and specifying a negotiated time-limited period of eligibility for cash aid. An alternate provision requires the case manager to consult with the parent applicant (client) in developing a PRC, lists client activities that the PRC might require, specifies that clients must agree to accept a bona fide offer of an unsubsidized full-time job unless they have good cause not to, but does not require a time limit in the PRC nor make provision for a limited benefit plan. A State may exempt a battered person from entering into a PRC if its terms would endanger his/her well-being.

Conference agreement

The conference agreement follows the House bill.

PENALTIES

Present law

No provision.

House bill

No provision.

Senate amendment

The PRC is to provide that if a family fails to comply with its terms, the family automatically will enter into a limited benefit plan (with a reduced benefit and later termination of aid, in accordance with a schedule determined by the State). If the State agency violates the PRC, the contract shall be invalid. The State is to establish a procedure, including the opportunity for hearing, to resolve disputes concerning participation in the PRC. The alternate PRC language provides these penalties: for the first act of noncompliance with the PRC, 33 percent reduction in the family's benefit for one month; for the second act, 66 percent reduction for 3 months; for third and subsequent acts of noncompliance, loss of eligibility for 6 months. Job refusal without good cause is treated as a third violation. However, in no case shall the penalty period extend beyond the duration of noncompliance.

Conference agreement

The conference agreement follows the House bill.

E. MANDATORY WORK REQUIREMENTS

WORK ACTIVITIES

Present law

JOBS programs must include specified educational activities (high school or equivalent education, basic and remedial education, and education for those with limited English proficiency); job skills training, job readiness activities, and job development and placement. In addition, States must offer at least two of these four items: group and individual job search; on-the-job training; work supplementation or community work experience program (CWEP) (or another work experience program approved by the DHHS Secretary). The State also may offer postsecondary education in "appropriate" cases.

House bill

"Work activities" are defined as unsubsidized employment, subsidized employment, subsidized public sector employment or work experience, on-the-job training, job search, education and training directly related to employment, and jobs skills training directly related to employment. Satisfactory attendance at secondary school, at State option, may be included as a work activity for a parent under 20 who has not completed high school.

Senate amendment

Establishes this list of work activities: unsubsidized employment, subsidized employment, on-the-job training, community service programs, job search (first 4 weeks only) and vocational educational training (12 months maximum). For work participation requirements, the proportion of persons counted as engaged in "work" through participation in vocational educational training cannot exceed 25 percent. For each tribe receiving a family assistance block grant, the Secretary, with participation of Indian tribes, shall establish minimum work participation rules, appropriate time limits for benefits, and penalties, similar to the general family assistance rules but consistent with the economic conditions and resources of the tribe.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with the modification that, for the work participation requirements, the proportion of persons counted as engaged in work through participation in vocational education cannot exceed 20 percent.

PARTICIPATION REQUIREMENTS: ALL FAMILIES

Present law

The following minimum percentage of non-exempt AFDC families must participate in JOBS:

Fiscal year:	*Minimum percentage*
1995 (last year)	20
1996 and thereafter	[1] 0

[1] No requirement.

Exempt from JOBS are parents whose youngest child is under 3 (1, at State option). Other exemptions include persons who are ill, incapacitated or needed at home because of illness or incapacity of another person. Also exempt are parents of a child under 6, unless the State guarantees child care and requires no more than 20 hours weekly of JOBS activity.

Participation rates are calculated for each month. A State's rate, expressed as a percentage, equals the number of actual JOBS participants divided by the number of AFDC recipients required to participate (non-exempt from JOBS).

In calculating a State's overall JOBS participation rate, a standard of 20 hours per week is used. The welfare agency is to count as participants the largest number of persons whose combined and averaged hours in JOBS activities during the month equal 20 per week.

The law requires States to guarantee child care when needed for JOBS participants and for other AFDC parents in approved education and training activities. Regulations require States to guarantee care for children under age 13 (older if incapable of self-care) to the extent that it is needed to permit the parent to work, train, or attend school. States must continue child care benefits for 1 year to ex-AFDC working families, but must charge them an income-related fee.

House bill

The following minimum percentages of all families receiving cash assistance must engage in work activities:

Fiscal year:	*Minimum percentage*
1996	10
1997	15
1998	20
1999	25
2000	27
2001	29
2002	40
2003 or thereafter	50

If States achieve net caseload reductions, they receive credit for the number of families by which the caseload is reduced for purposes of meeting the overall family participation requirements. The minimum participation rate shall be reduced by the percentage by which the number of recipient families during the fiscal year falls below the number of AFDC families in fiscal year 1995, except to the extent that the Secretary determines that the caseload reduction was required by terms of Federal law.

The fiscal year participation rates are the average of the rates for each month during the year. The monthly participation rates are measured by the number of recipient families in which an individual is engaged in work activities for the month, divided by the total number of recipient families that include a person who is 18 or older.

To be counted as engaged in work activities for a month, the recipient must be making progress in qualified activities for at least the minimum average number of hours per week shown in the table below. Of these hours, at least 20 hours must be spent in unsubsidized employment, subsidized private sector employment, subsidized public sector employment, work experience, or on-the-job training. During the first 4 weeks of required work activity, hourly credit also is given for job search and job readiness assistance.

Fiscal year	*Minimum average hours weekly*
1996	20
1997	20
1998	20
1999	25
2000	30
2001	30
2002	35
2003 or thereafter	35

Although a person must work at least 20 hours weekly in order for any hours of their training or education to count toward required participation, the bill does not prohibit a State from offering cash recipients an opportunity to participate in education or training before requiring them to work. In this case, however, participation does not count toward fulfillment of the State mandatory participation rate. Note: although the above table is in a paragraph entitled "requirements applicable to all families receiving assistance," another paragraph establishes a higher hourly requirement (35 hours weekly) in all years for 2-parent families. See below.

Senate amendment

The following minimum percentages of all families receiving cash assistance (except those with a child under 1, if exempted by the State) must participate in work activities:

Fiscal year	*Minimum percentage*
1996	25
1997	30
1998	35
1999	40
2000 or thereafter	50

The Secretary is directed to prescribe regulations for reducing the minimum participation rate required for a State if its caseload under the new program is smaller than in the final year of AFDC, but not if the decrease was required by Federal law or results from changes in eligibility criteria adopted by the State. With these qualifications, the regulations are to reduce the participation rate by the number of percentage points, if any, by which the caseload in a fiscal year is smaller than in fiscal year 1995.

States may exempt a parent or caretaker relative of a child under one year old and may exclude them from the participation rate calculation. States may exempt a battered person if their well-being would be endangered by a work requirement.

As in the House bill, the fiscal year participation rate is the average of the rates for each month of the year. However, overall monthly rates are measured by adding (1) the number of recipient families with an adult engaged in work for the month, (2) the number subject to a work refusal penalty in the month (if not subject to the penalty for more than 3 months out of the preceding 12), and (3) the number who worked their way off the program in the previous 6 months and that include an adult who is working for the month, and then dividing this total by the number of families enrolled in the program during the month that include an adult recipient. States have the option to include in the calculation of monthly participation rates families who receive assistance under a tribal family assistance plan if the Indian or Alaska Native is participating in work under standards comparable to those of the State for being engaged in work.

To be counted as engaged in work for a month, an adult must be participating in work for at least the minimum average number of hours per week shown in the table below (of which not fewer than 20 hours per week are attributable to a work activity). See list of work activities above.

Exception to the table: In fiscal year 1999 and thereafter, when required weekly hours rise above 20, a State may count a single parent with a child under age 6 as engaged in work for a month if the parent works an average of 20 hours weekly. Also, community service participants may be treated as engaged in work if they provide child care services for another participant for the number of hours deemed appropriate by the State.

Fiscal year	*Minimum average hours weekly*
1996	20
1997	20
1998	20
1999	25
2000	30
2001	30
2002	35
2003 or thereafter	35

Note: Although the above table is in a paragraph entitled "all families," another paragraph establishes a higher hourly requirement (35 hours weekly) in all years for 2-parent families. See below.

The Senate amendment states that nothing in sec. 421 (amounts for child care) shall be construed to provide an entitlement to child care services to any child.

Conference agreement

The conference agreement follows the House bill and the Senate amendment as follows:

The following minimum percentages of all families receiving cash assistance must participate in work activities:

Fiscal year	*Minimum percentage*
1996	15
1997	20
1998	25
1999	30
2000	35
2001	40
2002 or thereafter	50

The conference agreement generally follows the Senate amendment regarding reduction in the participation rate, with the modification that regulations shall not take into account families diverted from the State program as a result of differences in eligibility criteria under the State program (in comparison with the AFDC program that operated prior to the date of enactment). The regulations shall place the burden on the Secretary to prove that families were diverted as a direct result of differences in eligibility criteria.

The conference agreement follows the House bill regarding exemptions from the work requirement for battered individuals. The provision regarding the state option to exempt families with a child under 1 was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

The conference agreement follows the House bill and the Senate amendment regarding the calculation of the fiscal year rate. The conference agreement generally follows the Senate amendment regarding the calculation of monthly rates, except that the Senate recedes on counting people who have worked their way off the rolls in the previous 6 months and including sanctioned individuals in the numerator; conferees agree that sanctioned persons are to be subtracted from the denominator in determining monthly rates.

The conference agreement follows the House bill with regard to the number counted as engaged in work, except that the phrase "making progress in qualified activities" is replaced with "participating in qualified activities".

PARTICIPATION REQUIREMENTS: TWO-PARENT FAMILIES

Present law

The following minimum percentages of two-parent families receiving cash assistance must participate in specified work activities:

Fiscal year	*Minimum percentage*
1995	50
1996	60
1997	75
1998 (last year)	75
1999 and thereafter (no requirement)	0

Participation rates for a month equal the number of parents who participate divided by the number of principal earners in AFDC–UP families (but excluding families who received aid for 2 months or less, if one parent engaged in intensive job search).

One parent in the 2-parent family must participate at least 16 hours weekly in on-the-job training, work supplementation, community work experience program, or a State-designed work program.

House bill

The following minimum percentages of two-parent families receiving cash assistance must engage in work activities:

Fiscal year	*Minimum percentage*
1996	50
1997	50
1998	90
1999 and thereafter	90

Participation rates for a month are measured by the number of two-parent recipient families in which at least one adult is engaged in work activities for the month, divided by the total number of two-parent families that received cash aid during the month.

An adult in a 2-parent family is engaged in work activities when making progress in them for 35 hours per week, at least 30 of which are in unsubsidized employment, subsidized private sector employment, subsidized public sector employment, work experience, or on-the-job training (or job search and job readiness assistance for the first 4 weeks only).

Senate amendment

The following minimum percentages of two-parent families receiving cash assistance must participate in work:

Fiscal year	*Minimum percentage*
1996	60
1997	75
1998	75
1999 and thereafter	90

Participation rates for 2-parent families are measured (like those for all families) by adding (1) the number of 2-parent recipient families with an adult engaged in work for the month; (2) the number of 2-parent families subject to a work refusal penalty in the month (if not subject to the penalty for more than 3 months out of the preceding 12); and (3) the number of 2-parent families who worked their way off the program in the previous 6 months and that include an adult who is working for the month, and then dividing this total by the number of 2-parent families enrolled in the program during the month that include an adult recipient.

An adult in a 2-parent family must participate in work for at least 35 hours per week during the month, and at least 30 hours weekly must be attributable to one or more of the 6 work activities listed above in "4.E. Mandatory Work Requirements," above.

Conference agreement

The conference agreement follows the House bill and Senate amendment so that the following minimum percentages of two-parent families receiving cash assistance must participate in specified work activities:

Fiscal year	*Minimum percentage*
1996	50
1997	75
1998	75
1999 and thereafter	90

With regard to participation rates for a month, the conference agreement for 2-parent families matches the agreement for all families described above, so that the rates equal the number of two-parent recipient families in which at least one adult is engaged in work activities for the month, divided by the total number of two-parent families that received cash assistance minus sanctioned persons.

The conference agreement follows the House bill and the Senate amendment regarding creditable activities, except the Senate recedes so that the percentage of the caseload able to be counted as engaged in a work activity through vocational education training cannot exceed 20 percent.

PENALTIES

Present law

For failure to meet JOBS requirements without good cause, AFDC benefits are denied to the offending parent and payments for the children are made to a third party.

In a 2-parent family, failure of 1 parent to meet JOBS requirements without good cause results in denial of benefits for both parents (unless the other parent participates) and third-party payment on behalf of the children. Repeated failures to comply bring potentially longer penalty periods.

If a State fails to achieve the two required participation rates (overall and for 2-parent families), the Federal reimbursement rate for its JOBS spending (which ranges among States from 60% to 79% for most JOBS costs) is to be reduced to 50%.

House bill

If recipients refuse to participate in required work activities, their cash assistance is reduced by an amount to be determined by individual States, subject to good cause and other exceptions that the State may establish.

Recipients in two-parent families who fail to work the required number of hours receive the proportion of their monthly cash grant that equals the proportion of required work hours they actually worked during the month, or less at State option.

No officer or employee of the Federal government may regulate the conduct of States under this paragraph (about penalties against individuals) or enforce this paragraph against any State.

States not meeting the required participation rates have their overall grant (calculated without the bonus for reducing out-of-wedlock births and before other penalties listed in C(5) above) reduced by up to 5 percent the following fiscal year; penalties shall be based on the degree of noncompliance as determined by the Secretary.

Senate amendment

If an adult recipient refuses to engage in required work, the State shall reduce the amount of assistance to the family pro rata (or more, at State option) with respect to the period of work refusal, or shall discontinue aid, subject to good cause and other exceptions that the State may establish. A State may not penalize a single parent caring for a child under age 6 for refusal to work if the parent has a demonstrated inability to obtain needed child care. Penalties against individuals in 2-parent families follow those against individuals, except that the penalties may apply against parents of children under 6 who refuse to work due to an inability to obtain child care.

No specific provision about regulation of penalties against individuals. However, the amendment provides that neither the DHHS Secretary nor the Treasury Secretary may regulate the conduct of States under Title IV–A or enforce any of its provisions, except to the extent expressly provided in the Act.

If a State fails to meet minimum work participation rates, the Secretary is to reduce the family assistance block grant as follows: For the first year of failure, by 5% (applied in the next year); for subsequent years of failure, by an additional 5% (thus, by 5.25%). The Secretary shall impose reductions on the basis of the degree of noncompliance.

Conference agreement

The conference agreement follows the Senate amendment regarding penalties against individuals, except with the modification that the burden of proof to demonstrate an inability to find needed child care rests on the parent of a child under age 6. The conference agreement follows the Senate amendment regarding penalties against individuals in two-parent families.

The conference agreement follows the House bill on penalties against States not meeting work requirements, except the House recedes to the Senate on corrective action provisions.

RULE OF INTERPRETATION (CONCERNING EDUCATION AND TRAINING)

Present law

JOBS programs must include specified educational activities and job skills training.

House bill

This part does not prohibit a State from establishing a program for recipients that involves education and training.

Senate amendment

No explicit statement. However, the amendment qualifies vocational educational training as a "work activity," with a 12-month maximum and a limit on the proportion of vocational educational trainees who can be counted in calculating work participation rates.

Conference agreement

The House recedes, so no specific provision.

RESEARCH (ABOUT WORK PROGRAMS)

Present law

Authorizes States to make "initial" evaluations (in fiscal year 1991) of demographic characteristics of JOBS participants and requires the DHHS Secretary, in consultation with the Labor Secretary, to assist the States as needed.

House bill

The Secretary is to conduct research on the costs and benefits of mandatory work requirements in the Act, and to evaluate promising State approaches in employing welfare recipients. See also "Research, Evaluations, and National Studies" below.

Senate amendment

The Secretary is to conduct research on the costs, benefits, and effects of operating different State programs of temporary assistance to needy families, including their time limits. Research shall include studies of effects on employment rates. See also "Research, Evaluations, and National Studies" below.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment.

EVALUATION OF INNOVATIVE APPROACHES TO EMPLOYING RECIPIENTS OF ASSISTANCE

Present law

No provision.

House bill

The Secretary shall evaluate innovative approaches by the States to employ recipients of assistance.

Senate amendment

The Secretary may assist States in developing, and shall evaluate innovative approaches for reducing welfare dependency and increasing the well-being of minor children, using random assignments in these evaluations "to the maximum extent feasible."

Conference agreement

The conference agreement follows the Senate amendment.

ANNUAL RANKING OF STATES AND REVIEW OF WORK PROGRAMS

Present law

No provision.

House bill

The Secretary must annually rank the States in the order of their success in moving recipients into long-term private sector jobs, and review the 3 most and 3 least successful programs. HHS will develop these rankings based on data collected under the bill.

Senate amendment

Taking account of the number of poor children in the State and funds provided for them, the Secretary of HHS shall rank the States annually in the order of their success in placing recipients into long-term private sector jobs, reducing the overall caseload, and, when a practicable method for calculation becomes available, diverting persons from application and entry into the program. The Secretary shall review the 3 most and 3 least successful programs that provide work experience, help in finding jobs, and provide other support services to enable families to become independent of the program.

Conference agreement

The conference agreement follows the House bill.

ANNUAL RANKING OF STATES AND REVIEW OF OUT-OF-WEDLOCK BIRTHS

Present law

No provision.

House bill

No provision.

Senate amendment

The Secretary also is to annually rank States in the order of their success in reducing out-of-wedlock births and to review the programs of the 5 ranked highest and 5 ranked lowest in decreasing their absolute out-of-wedlock birth ratios (defined as the total number of out-of-wedlock births in families receiving cash assistance, divided by the total number of births in recipient families).

Conference agreement

The conference agreement follows the Senate amendment.

SENSE OF CONGRESS ON WORK PRIORITY FOR MOTHERS WITHOUT YOUNG CHILDREN

Present law

No provision.

House bill

It is the sense of Congress that States should give highest priority to requiring families with older preschool children or school-aged children to engage in work activities.

Senate amendment

Adds to highest priority group "adults in 2-parent families and adults in single-parent families with children that are older than preschool age."

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

WORK/SCHOOL REQUIREMENTS FOR NONCUSTODIAL PARENTS

Present law

The Secretary shall permit up to 5 States, on a voluntary or mandatory basis, to provide JOBS services to unemployed noncustodial parents unable to pay child support.

House bill

States must adopt procedures to ensure that persons owing past-due support to a child (or to a child and parent) receiving Title IV–A either work or have a plan for payment of that support. They must seek a court order requiring the parent to make payment, in accordance with a court-approved plan to work (unless incapacitated). It is the sense of Congress that States should require noncustodial, non-supporting parents under age 18 to fulfill community work obligations and attend appropriate parenting or money management classes after school.

Senate amendment

States must seek a court order or administrative order requiring a person who owes support to a child receiving Title IV–D services to pay the support in accordance with a court-approved plan or to work (unless incapacitated).

Conference agreement

The conference agreement follows the House bill, except that the sense of Congress that States should require non-custodial, non-supporting parents under age 18 to fulfill community work obligations and attend appropriate parenting or money management classes after school was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

DELIVERY OF WORK ACTIVITIES

Present law

Current law permits States to carry out JOBS programs directly or through arrangement or under contracts with administrative entities under the Job Training Partnership Act (JTPA), with State and local educational agencies or with private organizations, including community-based organizations as defined in JTPA (Section 485(A) of Social Security Act).

House bill

No provision.

Senate amendment

Requires that work activities for recipients of the temporary family assistance program be delivered through the statewide workforce development system that was earlier included in the Work Opportunity Act, unless a required activity is not available locally through the statewide workforce development system. However, as passed, the amendment does not include the workforce development title.

Conference agreement

The conference agreement follows the House bill.

DISPLACEMENT OF WORKERS

Present law

Under JOBS law, no work assignment may displace any currently employed worker or position (including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits). Nor may a JOBS participant fill a position vacant because of layoff or because the employer has reduced the workforce with the effect of creating a position to be subsidized.

House bill

No provision.

Senate amendment

Provides that no adult in a Title IV–A work activity shall be employed or assigned when another person is on layoff from the same or a substantially equivalent job, or when the employer has terminated the employment of a regular worker or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy thus created with a subsidized worker. This provision does not preempt or supersede any State or local law providing greater protection from displacement.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

F. PROHIBITIONS

FAMILIES WITHOUT A MINOR CHILD

Present law

Only families with dependent children (under age 18, or 19 at State option if the child is still in secondary school or in the equivalent level of vocational or technical training) can participate in the program.

House bill

Only families with minor children (under 18 years of age or under 19 years of age for full-time students in a secondary school or the equivalent) can participate in the program.

Senate amendment

Similar to House bill, but specifies that the minor children must live with their parent or other caretaker relative.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with the modification that a pregnant individual may receive assistance under the block grant.

ASSISTANCE FOR ALIENS

Present law

Illegal aliens are ineligible, but legal aliens and others permanently residing under color of law are eligible for Federal means-tested benefit programs. States must operate a System for Verification of Eligibility (SAVE) for determination of immigration or citizenship status of applicants and must verify the immigration status of aliens with the Immigration and Naturalization Service.

House bill

Block grant funds may not be used to provide cash benefits to a non-citizen unless the individual is a refugee under section 207 of the Immigration and Nationality Act who has been in the U.S. for under 5 years, a legal permanent resident over age 75 who has lived in the U.S. at least 5 years, a veteran (or the spouse or unmarried dependent child of a veteran) honorably discharged from the U.S. Armed Forces, or a legal permanent resident unable because of disability or mental impairment to comply with certain naturalization requirements. In addition, legal permanent residents who are current beneficiaries retain eligibility for the first year after enactment.

Senate amendment

Aliens entering after enactment are barred from receiving benefits for 5 years, with exceptions similar to House bill. Separately, States have the option to deny non-citizens benefits using block grant funds. Eligibility may be affected by changes in the sponsor-to-alien deeming provisions. These changes may affect their eligibility even after aliens have attained citizenship.

Conference agreement

The conference agreement generally follows the Senate amendment so that noncitizens arriving after the date of enactment may not receive benefits from the block grant during their first 5 years in the U.S.; the conference agreement modifies the Senate amendment so that there is a State option to provide block grant assistance to noncitizens currently residing in the U.S., except that noncitizens receiving AFDC benefits on the date of enactment would continue to be eligible to receive block grant benefits until January 1, 1997. The conference agreement makes specific exceptions to these restrictions for refugees, asylees, veterans and active duty military, and aliens who have worked at least 40 calendar quarters as defined under title II of the Social Security Act. For further details see Subtitle D: Noncitizens.

No Cash Assistance for Out-of-Wedlock Births

Present law

No provision forbidding eligibility. Current law permits a State to provide AFDC to an unwed mother under 18 and her child only if they live with their parent or another adult relative or in another adult-supervised supportive arrangement; exceptions are allowed (Sec. 402(A)).

AFDC law has no provision directly comparable for funding second-chance homes.

AFDC law requires States, to the extent resources permit, to require mothers under age 20 who failed to complete high school to participate in an educational activity, even if they otherwise would be exempt because of having a child under age 3 (or, at State option, under age 1). However, States may exempt some school dropout mothers under 18 years old from this requirement.

House bill

Temporary Assistance to Needy Families Block Grant funds may not be used to provide cash benefits to a child born out-of-wedlock to a mother under age 18 or to the mother until the mother reaches age 18. States must exempt mothers to whom children are born as a result of rape or incest. Block grant funds can be used to provide non-cash (e.g. voucher) assistance to young mothers and their children.

Senate amendment

Explicitly permits States to decide whether or not to give assistance to a child born out-of-wedlock to a mother under 18 years old, and to the mother until she reaches 18. However, if a State elects to extend assistance to these families, the minor mother must live with a parent, legal guardian or other adult relative unless they have no such appropriate relative or the State agency determines (1) that they had suffered, or might suffer, harm in the relative's home or (2) that the requirement should be waived for the sake of the child.

The State shall provide or assist a minor mother in finding a suitable home, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement. The amendment authorizes to be appropriated, and appropriates funding for second-chance homes for unmarried teenage parents ($25 million yearly for FYs 1996 and 1997 and $20 million yearly for FYs 1998–2000).

Further, if a State aids these unwed minor mothers, it must require those who have not completed high school, or its equivalent, to attend school unless their child is under 12 weeks old. If the mother fails to attend high school or an approved alternative training program, the State must reduce her benefit or end it.

Conference agreement

The conference agreement generally follows the Senate amendment, except that the provision extending a state option to deny cash assistance for out-of-wedlock births was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974). With regard to second chance homes, the conference agreement follows the Senate amendment except that funding is authorized but not appropriated for this purpose. The conference agreement follows the Senate amendment regarding the school requirement for unwed minor mothers.

NO ADDITIONAL ASSISTANCE FOR ADDITIONAL CHILDREN

Present law

No provision.

House bill

Block grant funds may not be used to provide additional cash benefits for a child born to a recipient of cash welfare benefits, or an individual who received cash benefits at any time during the 10-month period ending with the birth of the child. Mothers to whom children are born as a result of rape or incest are exempted. Block grant funds can be used to provide non-cash (voucher) assistance to young mothers and their children.

Senate amendment

Explicitly permits States to deny aid to child born to a mother already receiving aid under the program or to one who received benefits from the program at any time during the 10 months ending with the baby's birth.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with the modification that the States may exempt up to 50% of their caseload from the 60-month limit.

NO ASSISTANCE FOR MORE THAN 5 YEARS

Present law

No provision.

House bill

Block grant funds may not be used to provide cash benefits for the family of an individual who, after attaining 18 years of age, has received block grant funds for 60 months, whether or not successive; States are permitted to provide hardship exemptions from the 60-month time limit for up to 10 percent of their caseload.

Senate amendment

Block grant funds may not be used to provide cash benefits for the family of a person who has received block grant aid for 60 months (or less at State option), whether or not consecutive. States may give hardship exemptions to up to 20 percent of their caseload. (Exempted from the 60-month time limit is a person who received aid as a minor child and who later applied as the head of her own household with a minor child.)

Conference agreement

The conference agreement follows the Senate amendment, with the modification that no assistance may be provided beyond 5 years and that States may exempt up to 15 percent of their caseload from this limit. Battered individuals may qualify for this exemption, but States are not required to exempt such individuals.

NO ASSISTANCE FOR FAMILIES NOT COOPERATING WITH PATERNITY ESTABLISHMENT

Present law

As a condition of eligibility, applicants or recipients must cooperate in establishing paternity of a child born out-of-wedlock, in obtaining support payments, and in identifying any third party who may be liable to pay for medical care and services for the child.

House bill

Block grant funds may not be used to provide cash benefits to persons who fail to cooperate with the State child support enforcement agency in establishing the paternity of any child of the individual; the child support agency defines cooperation.

Senate amendment

Maintains current law. In addition, see "Payments To States" for penalty against a State that fails to enforce penalty requested by the IV–D agency against a person who does not cooperate in establishing paternity.

Conference agreement

The conference agreement follows the Senate amendment with the modification that States must deny a parent's share of the family welfare benefit if the parent fails to cooperate; the State may deny benefits to the entire family for failure to cooperate.

NO ASSISTANCE FOR FAMILIES NOT ASSIGNING SUPPORT RIGHTS TO THE STATE

Present law

As a condition of AFDC eligibility, applicants must assign child support and spousal support rights to the State.

House bill

Block grant funds may not be used to provide cash benefits to a family with an adult who has not assigned to the State rights to child support or spousal support.

Senate amendment

Gives States the option to require applicants for temporary family assistance (and recipients) to assign child support and spousal support rights to the State.

Conference agreement

The conference agreement follows the House bill.

WITHHOLDING PORTION OF AID FOR CHILD WHOSE PATERNITY IS NOT ESTABLISHED

Present law

No provision.

House bill

If, at the time a family applies for assistance, the paternity of a child in the family has not been established, the State must impose a financial penalty ($50 or 15 percent of the monthly benefits of a family of that size, whichever the State chooses) until the paternity of the child is established. Once paternity is established, all the money withheld as a penalty must be remitted to the family if it is still eligible for aid. Mothers to whom children are born as a result of rape or incest are exempted from this penalty. Provision effective 1 year after enactment (2 years at State option).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the modification that States may impose a financial penalty if paternity is not established.

DENIAL OF BENEFITS TO PERSONS WHO FRAUDULENTLY RECEIVED AID IN TWO STATES

Present law

No provision.

House bill

Ineligible for block grant assistance for 10 years is any individual convicted of having fraudulently misrepresented residence (or found by a State to have made a fraudulent statement) in order to obtain benefits or services from two or more States from the block grant, Medicaid, Food Stamps, or Supplemental Security Income.

Senate amendment

Ineligible for block grant assistance for 10 years is any person convicted in Federal court or State court of having fraudulently misrepresented residence in order to obtain benefits or services from two or more States from the cash block grant, Medicaid, Food Stamps, or Supplemental Security Income.

Conference agreement

The conference agreement follows the Senate amendment.

DENIAL OF AID FOR FUGITIVE FELONS, PROBATION AND PAROLE VIOLATORS

Present law

No provision.

House bill

No assistance may be provided to an individual who is fleeing to avoid prosecution, custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony (or, in New Jersey, a high misdemeanor), or who violates probation or parole imposed under Federal or State law.

Any safeguards established by the State against use or disclosure of information about individual recipients shall not prevent the agency, under certain conditions, from providing the address of a recipient to a law enforcement officer who is pursuing a fugitive felon or parole or probation violator. This provision applies also to a recipient sought by an officer not because he is a fugitive but because he has information that the officer says is necessary for his official duties. In both cases the officer must notify the State that location or apprehension of the recipient is within his official duties.

Senate amendment

A State shall furnish law enforcement officers, upon their request, the address, social security number, and photograph (if available) of any recipient if the officers notify the agency that the recipient is a fugitive felon, or a violator of probation or parole, or that he has information needed by the officers to perform their duties, and that the location or apprehension of the recipient is within the officers' official duties.

Conference agreement

The conference agreement follows the House bill.

NO ASSISTANCE FOR MINOR CHILDREN WHO ARE ABSENT, OR RELATIVES WHO FAIL TO NOTIFY AGENCY OF CHILD'S ABSENCE

Present law

Regulations allow benefits to continue for children who are "temporarily absent" from home.

House bill

No assistance may be provided for a minor child who has been absent from the home for 45 consecutive days or, at State option, between 30 and 90 consecutive days. States may establish a good cause exemption as long as it is detailed in the State report to the Secretary. No assistance can be given to a parent or caretaker who fails to report a missing minor child within 5 days of the time it is clear that the child is absent.

Senate amendment

Similar provision to House bill, with different wording.

Conference agreement

The conference agreement follows the House bill.

G. INCOME/RESOURCE LIMITS, TREATMENT OF EARNINGS AND OTHER INCOME RESOURCE LIMITS

Present law

$1,000 per family in counted resources (excluding home and some of the value of an auto, funeral arrangements, burial plots, real property that the family is attempting to sell, and—for two months—refunds of the Earned Income Tax Credit (EITC)).

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

INCOME LIMITS

Present law

Gross family income limit: 185% of the State standard of need.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

EARNINGS

Present law

Mandatory disregard: during first 4 months of a job, $120 and one-third, plus child care costs up to a limit; next 8 months, $120 plus child care; after 12 months, $90 plus child care.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

EARNED INCOME TAX CREDIT

Present law

Mandatory disregard: advance EITC payments must be disregarded.

House bill

Repeals mandatory EITC disregard (a provision of AFDC law). States would set policy about treatment of EITC payments by block grant program.

Senate amendment

Provision is identical to House position.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

CHILD SUPPORT

Present law

Mandatory disregard: first $50 monthly in child support collections is passed through to the family. In some States, child support payments that fill some or all of the gap between payment and need standard must be ignored.

House bill

In determining a family's eligibility and payment amount under the block grant, a State may not disregard child support collected by the State and distributed to the family.

Senate amendment

State option. Repeals required disregard of the first $50 monthly in child support collections distributed to the family (a provision of AFDC law).

Conference agreement

The conference agreement follows the Senate amendment.

OTHER CASH AID

Present law

AFDC benefits may not be paid to a recipient of old-age assistance (predecessor to Supplemental Security Income (SSI) and now available only in Puerto Rico, Guam, and the U.S. Virgin Islands), SSI, or AFDC foster care payments.

House bill

If block grant funds are used to provide payments to a recipient of old-age assistance, SSI, or payments under the Child Protection Block grant, a State may not disregard these other payments in determining a family's eligibility for and payment amount from the block grant.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

H. VARIOUS PROCEDURAL AND POLICY RULES

STATEWIDE REQUIREMENT

Present law

AFDC must be available in all political subdivisions, and, if administered by them, be mandatory upon them.

House bill

No provision.

Senate amendment

Under the State plan, a State must outline how it intends to conduct a family assistance program "designed to serve all political subdivisions in the State."

Conference agreement

The conference agreement follows the Senate amendment.

SINGLE STATE AGENCY

Present law

Single agency must administer or supervise administration of the plan.

House bill

No provision.

Senate amendment

The State's Chief Executive Officer must certify which State agency or agencies are responsible for administration and supervision of the program for the fiscal year.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that public and local agencies must have 60 days to submit comments.

STATE COST SHARING

Present law

State must share in program costs.

House bill

No provision.

Senate amendment

For the basic temporary assistance block grant, for 4 years, for "contingency" funds, and for additional child care funds (beyond those earmarked in the block grant) States must share in program costs.

Conference agreement

The conference agreement generally follows the Senate amendment, with modifications to the amount of required State cost sharing.

AID TO ALL ELIGIBLES

Present law

State must furnish aid to eligible persons with reasonable promptness and give opportunity to make application to all wishing it.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

FAIR HEARING

Present law

State must give fair hearing opportunity to person whose claim is denied or not acted upon promptly.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

ADMINISTRATIVE METHODS

Present law

State must adopt administrative methods found necessary by the Secretary.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

ZERO BENEFIT BELOW $10, ROUNDING BENEFITS

Present law

State cannot pay AFDC below $10 monthly and must round down to the next lower dollar both the need standard and the benefit.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

PRE-ELIGIBILITY FRAUD DETECTION

Present law

State must have measures to detect fraudulent applications for AFDC before establishment of eligibility.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

CORRECTION OF ERRONEOUS PAYMENTS

Present law

State must promptly correct overpayments and underpayments.

House Bill

No provision.

Senate amendment

Requires the Treasury Secretary, upon notification from a State that it has overpaid a former recipient of temporary cash assistance and has attempted unsuccessfully to collect the overpayment, to collect the sum from Federal tax refunds.

Conference agreement

The conference agreement follows the Senate amendment.

APPEAL PROCEDURE (FOR STATES)

Present law

Current law (sec. 1116 of the Social Security Act) entitles a State to a reconsideration, which DHHS must grant upon request, of any disallowed reimbursement claim for an item or class of items. The section also provides for administrative and judicial review, upon petition of a State, of DHHS decisions about approval of State plans. At the option of a State, any plan amendment may be treated as the submission of a new plan.

House bill

Repeals reference to Title IV–A in section 1116.

Senate amendment

Requires the Secretary to notify the Governor of a State of any adverse decision or action under Title IV–A, including any decision about the State's plan or imposition of a penalty. Provides for administrative review by a Departmental Appeals Board within DHHS and requires a Board decision within 60 days after an appeal is filed. Provides for judicial review (by a United States district court) within 90 days after a final decision by the Board. The Amendment also repeals the reference to Title IV–A in section 1116.

Conference agreement

The conference agreement follows the Senate amendment.

I. QUALITY CONTROL/AUDITS

Present law

The Secretary must operate a quality control system to determine the amount of Federal matching funds to be disallowed, if any, because of erroneous payments. The law also prescribes penalties for payment error rates above the national average. AFDC payments to States are subject to audits conducted under the Single Audit Act [Ch. 75, Title 31, U.S.C.]

House bill

Family assistance block grants are subject to the Single Audit Act. If an audit conducted under this Act finds that a State has used block grant funds in violation of the law, its grant for the next year is to be reduced by that amount (but no quarterly payment is to be reduced by more than one-fourth).

Senate amendment

Requires a State to offset loss of Federal funds with its own, maintaining the full block grant level. Also, the penalty shall not be imposed if the State proves to the Secretary that the violation was not intentional, and if the State implements an approved corrective action plan. Each State must audit its cash block grant expenditures annually and submit a copy to the State legislature, Treasury Secretary and DHHS Secretary. The audit must be conducted by an entity that is independent from any agency administering activities under title IV–A. Further, the DHHS Secretary is to develop a quality assurance system of data collection and reporting. Also subject to the Single Audit Act.

Conference agreement

The conference agreement follows the House bill regarding audits to review States' use of funds. See also Penalties, e.g. against States misusing funds and against States failing to meet work requirements.

J. DATA COLLECTION AND REPORTING

REPORTING REQUIREMENTS

Present law

States are required to report the average monthly number of families in each JOBS activity, their types, amounts spent per family, length of JOBS participation and the number of families aided with AFDC/JOBS child care services, the kinds of child care services provided, and sliding fee schedules. States that disallow AFDC for minor mothers in their own living quarters are required to report the number living in their parent's home or in another supervised arrangement. States also must report data (including numbers aided, types of families, how long aided, payments made) for families who receive transitional Medicaid benefits. DHHS collects data about demographic characteristics and financial circumstances of AFDC families from its National Integrated Quality Control System (NIQCS) and publishes State and national information that represents average monthly amounts for a fiscal year. The NIQCS uses monthly samples of AFDC cases.

House bill

States are required, not later than 6 months after the end of each fiscal year, to transmit to the Secretary the following aggregate information on families receiving block grant benefits during the fiscal year:

(a) the number of adults receiving assistance;

(b) the number of children receiving assistance and the average age of children;

(c) the employment status and average earnings of employed adults;

(d) the number of one-parent families in which the sole parent is a widow or widower, is divorced, is separated, or is never married;

(e) the age, race, educational attainment, and employment status of parents;

(f) the average assistance provided to families;

(g) whether, at the time of application, the families or anyone in the families receive benefits from the following public programs: (1) Housing, (2) Food Stamps, (3) Head Start, (4) Job Training;

(h) the number of months the families have been on welfare during their current spell;

(i) the total number of months for which benefits have been provided to the families;

(j) data necessary to indicate whether the State is in compliance with the State's plan;

(k) the components of any employment and training activities, and the average monthly number of adults in each component; and

(l) the number of part-time and full-time job placements made by the program, the number of cases with reduced assistance, and the number of cases closed due to employment.

Senate amendment

States are required to make quarterly reports based on sample case records providing disaggregated data for the quality assurance system, including:

(a) age of adults and children (including pregnant women) in each family;

(b) marital and familial status of each family member (including whether family includes 2 parents and whether child is living with an adult relative other than a parent);

(c) gender, educational level, work experience, and race of each family head;

(d) health status of each family member (including whether any is seriously ill, disabled, or incapacitated and is being cared for by another family member);

(e) type and amount of any benefit or assistance received, including amount of and reason for any benefit reduction, and if help is ended, whether this is because of employment, sanction, or time limit;

(f) any benefit or assistance received by a family member with respect to housing, food stamps, job training, or Head Start;

(g) number of months since the family's most recent application for aid, and if application was denied, the reason;

(h) number of times a family applied for and received aid from the cash block grant program and the number of months were received in each "spell" of assistance;

(i) employment status of adults in family (including hours worked and amount earned);

(j) date on which an adult family member began to engage in work, hours worked, work activity performed, amount of child care assistance, if any;

(k) number of persons in each family receiving, and the number not receiving, assistance, and the relationship of each person to the youngest child in the family;

(l) citizenship status of each family member;

(m) housing arrangement of each family member;

(n) amount of unearned income, child support; assets and other financial factors relevant to eligibility;

(o) location in the State of each recipient family; and

(p) any other data determined by Secretary to be necessary for efficient and effective administration.

States are required to report the following aggregated monthly data about families who received temporary family assistance for each month in the calendar quarter preceding the one in which the data are submitted, families applying for assistance in the preceding quarter, and families that became ineligible for aid during that quarter: (1) number of families, (2) number of adults in each family, (3) number of children in each family, and (4) number of families whose assistance ended because of employment, sanctions, or time limits.

The Secretary shall determine appropriate subsets of the data listed above that a State is required to submit regarding applicant and no-longer eligible families.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, except that provisions that make reference to "race" are dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

AUTHORITY OF STATES TO USE ESTIMATES

Present law

The National Integrated Quality Control System (above) uses monthly samples of AFDC cases. JOBS regulations require States to submit a sample of monthly unaggregated case record data.

House bill

States may use scientifically acceptable sampling methods to estimate the data elements required for annual reports.

Senate amendment

The Secretary shall provide States with case sampling plans and data collection procedures deemed necessary for statistically valid estimates.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, and clarifies that the Secretary may, in the case of States that use sampling methods, challenge the sampling plan as scientifically invalid.

OTHER STATE REPORTING REQUIREMENTS

Present law

Regulations require each State to submit quarterly estimates of the total amount (and the Federal share) of expenditures for AFDC benefits and administration.

Required quarterly reports include estimates of the Federal share of child support collections made by the State; see above for transitional child care and Medicaid reporting requirements.

House bill

The report submitted by the State each fiscal year must also include:

(1) a statement of the percentage of the funds paid to the State that are used to cover administrative costs or overhead;

(2) a statement of the total amount expended by the State during the fiscal year on programs for needy families; and

(3) the number of noncustodial parents in the State who participated in work activities as defined in the bill during the fiscal year.

Senate amendment

The report required by a State for a fiscal year must include:

(1) a statement of the total amount and percentage of Federal funds paid to the State under Title IV–A that are used for administrative costs or overhead;

(2) a statement of the total amount of State funds expended on programs for the needy;

(3) the number of noncustodial parents who participated in work activities during the fiscal year;

(4) the total amount of child support collected by the State IV–D agency on behalf of a family in the cash assistance program;

(5) the total amount spent by the State for child care under Title IV–A, with a description of the types of care, including transitional care for families who no longer receive assistance because of work and "at-risk" care for persons who otherwise might become eligible for assistance; and

(6) the total amount spent by the State for providing transitional services to a family that no longer receive assistance because of employment, along with a description of those services.

Conference agreement

The conference agreement follows the House bill and Senate amendment as follows:

(1) administrative funds—follow House bill;
(2) State spending—follow House bill;
(3) noncustodial parent—follow House bill;
(4) child support—follow House bill;

(5) child care—follow House bill; and
(6) transition services—follow Senate amendment.

K. REPORTS REQUIRED BY DHHS SECRETARY

Present law

The law requires the DHHS Secretary to report promptly to Congress the results of State reevaluations of AFDC need standards and payment standards required at least every 3 years. The Secretary is to annually compile and submit to Congress annual State reports on at-risk child care. The Family Support Act required the Secretary to submit recommendations regarding JOBS performance standards by a deadline that was extended.

House bill

The DHHS Secretary must report to Congress within 6 months on the status of automatic data processing systems in the States and on what would be required to produce a system capable of tracking participants in public programs over time and checking case records across States to determine whether some individuals are participating in public programs in more than one State. The report should include a plan for building on the current automatic data processing system to produce a system capable of performing these funcitions as well as an estimate of the time required to put the system in place and the cost of the system.

The DHHS Secretary must, to the extent feasible, produce and publish for each State, county, and local unit of government for which data have been compiled in the most recent census of population, and for each school district, data about the incidence of poverty. Data shall include, for each school district, the number of children age 5 to 17 inclusive, in families below the poverty level, and, for each State and county for which data have been compiled by the Census Bureau, the number of persons aged 65 or older. Data shall be published for each State, county and local unit of government in 1996 and at least every second year thereafter; and for each school district, in 1998 and at least every second year thereafter. Data may be produced by means of sampling, estimation, or any other method that the Secretary determines will produce current, comprehensive, and reliable information. If reliable data could not be otherwise produced, the Secretary is given authority to aggregate school districts. The DHHS Secretary is to consult with the Secretary of Education in producing data about school districts. If unable to produce and publish the required data, the Secretary must submit a report to the President of the Senate and the Speaker of the House not later than 90 days before the start of the following year, enumerating each government or school district excluded and giving the reason for the exclusion.

Senate amendment

The Secretary must, in cooperation with the States, study and analyze measures of program outcomes (as an alternative to minimum participation rates) for evaluating the success of State block grant programs in helping recipients leave welfare. The study must include a determination of whether outcomes measures should be applied on a State or national basis and a preliminary assessment of the job placement performance bonus established in the Act. The Secretary must report findings to the Committee on Finance and the Committee on Ways and Means not later than September 30, 1998.

The Secretary is to report by Dec. 31, 1997, to the Committee on Ways and Means and the Committee on Economic and Educational Opportunities of the House and the Committee on Finance, the Committee on Labor and Human Resources, and the Special Committee on Aging of the Senate setting forth findings of a study on the effects of welfare changes made by the Act on grandparents who are primary caregivers for their grandchildren. The study is to identify barriers to participation in public programs by grandparent caregivers, including inconsistent policies, standards, and definitions of programs providing medical aid, cash, child support enforcement, and foster care.

Not later than March 31, 1998, and each fiscal year thereafter, the Secretary shall send Congress a report describing:

(1) whether States are meeting minimum participation rates and whether they are meeting objectives of increasing employment and earnings of needy families, increasing child support collections, and decreasing out-of-wedlock pregnancies and child poverty;

(2) demographic and financial characteristics of applicant families, recipient families, and those no longer ineligible for temporary family assistance;

(3) characteristics of each State program of temporary family assistance; and

(4) trends in employment and earnings of needy families with minor children.

Conference agreement

The conference agreement follows the House bill and Senate amendment as follows:

(1) data processing—follow House bill;

(2) poverty—follow Senate amendment;

(3) alternatives—the provision in the Senate amendment was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974);

(4) grandparents—follow House bill; and

(5) State progress—follows Senate amendment with the modification that in evaluating innovative approaches to reducing welfare dependency, attention should be paid to welfare recipients who suffer from substance abuse or addiction..

L. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES

Present law

The law authorizes $5 million annually for cooperative research or demonstration projects, such as those relating to the prevention and reduction of dependency.

House bill

The Secretary may conduct research on the effects, costs, benefits, and caseloads of State programs funded under this part. The Secretary may assist the States in developing, and shall evaluate (using random assignment to experimental and control groups to the maximum extent feasible), innovative approaches to employing recipients of cash aid under this part. The Secretary may conduct studies of the welfare caseloads of States operating welfare reform programs. The Secretary shall develop innovative methods of disseminating information on research, evaluations, and studies.

Senate amendment

The Secretary may conduct research on the effects, benefits, and costs of operating different State programs of Temporary Assistance to Needy Families, including time limits for eligibility. The research shall include studies on the effects of different programs and the operation of the programs on welfare dependency, illegitimacy, teen pregnancy, employment rates, child well-being, and any other appropriate area. The Secretary may assist States in developing, and shall evaluate innovative approaches for reducing welfare dependency and increasing the well-being of minor children, using random assignments in these evaluations "to the maximum extent feasible."

The Secretary shall develop innovative methods of disseminating information on research, evaluations, and studies, including ways to facilitate sharing of information via computers and other technologies. The Senate amendment makes a State eligible to receive funding to evaluate its family assistance program if it submits an evaluation design determined by the Secretary to be rigorous and likely to yield credible and useful information. The State must pay 10 percent of the study's cost, unless the Secretary waives this rule. For these State-initiated evaluation studies of the family assistance program (and for costs of operating and evaluating demonstration projects begun under the AFDC waiver process) the amendment authorizes to be appropriated, and appropriates, a total of $20 million annually for 5 years (FYs 1996–2000).

Conference agreement

The conference agreement follows the Senate amendment except that $15 million is appropriated annually for this purpose.

M. WAIVERS

Present law

The law authorizes DHHS Secretary to waive specified requirements of State AFDC plans in order to enable a State to carry out any experimental, pilot, or demonstration project that the Secretary judges likely to assist in promoting the program's objective. (Sec. 1115 of Social Security Act) Some 34 States have received waivers from the Clinton Administration for welfare reforms of their own.

House bill

Repeals AFDC. Also, expressly repeals authority for waiver of specified provisions of AFDC law (Sec. 402, State plan requirements, and Sec. 403, terms of payment to States) for demonstration projects.

Senate amendment

Provides that terms of AFDC waivers in effect, or approved, as of October 1, 1995, will continue until their expiration, except that beginning with fiscal year 1996 a State operating under a waiver shall receive the block grant described under section 403 in lieu of any other payment provided for in the waiver. The amendment gives States the option to terminate waivers before their expiration, but requires that early-ended projects be summarized. The amendment provides that a State that submits a request to end a waiver by January 1, 1996, or 90 days after adjournment of the first regular session of the State legislature that begins after the date of enactment, shall be held harmless for accrued cost neutrality liabilities incurred under the waiver.

The Secretary is directed to encourage any State now operating a waiver to continue the project and to evaluate its result or effect. The amendment allows a State to elect to continue one or more individual waivers.

Conference agreement

The conference agreement follows the Senate amendment.

N. STUDIES BY THE CENSUS BUREAU

Present law

No provision.

House bill

The Census Bureau must expand the Survey of Income and Program Participation to evaluate the impact of welfare reforms made by this title on a random national sample of recipients and, as appropriate, other low-income families. The study should focus on the impact of welfare reform on children and families, and should pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells. Ten million dollars per year for 4 years in entitlement funds are authorized for this study.

Senate amendment

Expansion of SIPP is identical to House provision.

In addition, the Secretary of Commerce shall expand the Census Bureau's question (for the decennial census and mid-decade census) concerning households with both grandparents and their grandchildren so as to distinguish between households in which a grandparent temporarily provides a home and those where the grandparent serves as primary caregiver.

Conference agreement

The conference agreement follows the House bill regarding the expansion of SIPP to evaluate welfare programs. The provision in the Senate amendment regarding census data on grandparents as caregivers was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

O. SERVICES FROM CHARITABLE, RELIGIOUS, OR PRIVATE ORGANIZATIONS

Present law

The Child Care and Development Block Grant Act prohibits use of any financial assistance provided through any grant or contract for any sectarian purpose or activity. In general, it requires religious nondiscrimination, but it does allow a sectarian organization to require employees to adhere to its religious tenets and teachings.

House bill

No provision.

Senate amendment

Authorizes States to administer and provide family assistance services (and services under Supplemental Security Income and Public Housing) through contracts with charitable, religious, or private organizations. Authorizes States to pay recipients by means of certificates, vouchers, or other forms of disbursement that are redeemable with these private organizations. States that religious organizations are eligible, on the same basis as any other private organization, to provide assistance as contractors or to accept certificates and vouchers so long as their programs "are implemented consistent with" the Establishment Clause of the Constitution. Stipulates that any religious organization with a contract to provide welfare services shall retain independence from all units of government and that such a religious organization (or one that redeems welfare certificates) may require employees who render service related to the contract or certificates to adhere to the religious tenets and teaching of the organization and to its rules, if any, regarding use of drugs or alcohol. Provides that, except as otherwise allowed by law, a religious organization administering the program may not discriminate against beneficiaries on the basis of religious belief, or refusal to participate in a religious practice. Requires States to provide an alternative provider for a beneficiary who objects to the religious character of the designated organization. Provides that no funds provided directly to institutions or organizations to provide services and administer programs shall be spent for sectarian worship or instruction, but does not apply this limitation to financial assistance in the form of certificates or vouchers, if the beneficiary may choose where the aid is redeemed.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

5. TRANSFERS

A. CHILD SUPPORT PENALTIES

Present law

If a State's child support plan fails to comply substantially with Federal requirements, the Secretary is to reduce its AFDC matching funds by percentages that rise for successive violations (sec. 403(h) of the Social Security Act).

House bill

The provision for child support review penalties—loss of Federal payments for cash assistance—now found in 403(h) of part A of the Social Security Act is retained in the block grant.

Senate amendment

No provision. However, there is a penalty assessed against States for failure to enforce penalties requested by child support agency against recipients who do not cooperate in establishing paternity.

Conference agreement

The conference agreement follows the House bill.

B. ASSISTANT SECRETARY FOR FAMILY SUPPORT

Present law

An Assistant Secretary for Family Support, appointed by the President by and with consent of the Senate, is to administer AFDC, child support enforcement, and the Jobs Opportunities and Basic Skills (JOBS) program.

House bill

The provision for an Assistant Secretary for Family Support now found in section 417 of Part A of the Social Security Act is retained in the block grant (as sec. 409), but modified to remove the reference to JOBS (which the House bill repeals).

Senate amendment

Identical provision placed in sec. 415.

Conference agreement

The conference agreement follows the House bill.

6. CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT

Present law

No provision.

House bill

This section makes a series of technical amendments that conform the provisions of the House bill with various titles of the Social Security Act and provide for the repeal of Part F of Title IV (the JOBS program).

Senate amendment

This section makes a series of amendments that conform provisions of the Senate amendment with various titles of the Social Security Act.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, with changes made as appropriate.

7. CONFORMING AMENDMENTS TO OTHER LAWS

Present law

No provision.

House bill

This section makes a series of technical amendments to conform provisions of the House bill to the Internal Revenue Code, the Omnibus Reconciliation Act of 1987, the Housing and Urban-Rural Recovery Act of 1983, the Tax Equity and Fiscal Responsibility Act of 1982, and the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

Senate amendment

Section 107 makes a series of amendments that conform provisions of the Senate amendment to the Food Stamp Act, the Agriculture and Consumer Protection Act, the National School Lunch Act, and the Child Nutrition Act.

Section 108 makes a series of amendments that conform provisions of the Senate amendment to the Unemployment Compensation Amendments of 1976, the Omnibus Budget Reconciliation Act of 1987, the House and Urban–Rural Recovery Act of 1983, the Tax Equity and Fiscal Responsibility Act of 1982, the Social Security Amendments of 1967, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, the Higher Education Act of 1965, the Carl D. Perkins Vocational and Applied Technology Education Act, the Elementary and Secondary Education Act of 1965, Public Law 99–88, the Internal Revenue Code of 1986, the Wagner-Peyser Act, the Job Training Partnership Act, the Low-Income Home Energy Assistance Act of 1981, the Family Support Act of 1988, the Balanced Budget and Emergency Deficit Control Act of 1985, the Immigration and Nationality Act, the Head Start Act, and the School-to-Work Opportunities Act of 1994.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, with changes made as appropriate.

8. CONTINUED APPLICATION OF CURRENT STANDARDS UNDER MEDICAID PROGRAM

Present law

States must continue Medicaid (or pay premiums for employer-provided health insurance) for 6 months to a family that loses AFDC eligibility because of hours of, or income from, work of the caretaker relative, or because of loss of the earned income disregard after 4 months of work. States must offer an additional 6 months of medical assistance, for which it may require a premium payment if the family's income after child care expenses is not above the poverty guideline. For extended medical aid, families must submit specified reports. States must continue Medicaid for 4 months to those who lose AFDC because of increased child or spousal support.

House bill

Although AFDC would be repealed, its standards would continue to be used by the Medicaid program. States would have to give Medicaid to families who would have received AFDC if it still existed as in effect on March 7, 1995. The frozen AFDC rules would govern Medicaid eligibility for both recipients and non-recipients of the new block grant funds, including those categorically ineligible for cash benefits.

Senate amendment

Same as House provision except for date at which AFDC rules would be "frozen" (June 1, 1995, rather than March 7, 1995). If an AFDC waiver (as of June 1, 1995) affects Medicaid eligibility, the State has the option to continue to apply the waiver in regard to Medicaid after the date when the waiver otherwise would end.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with the clarification that States will determine Medicaid eligibility for recipients of block grant assistance (in conformity with other pending Medicaid changes).

9. EFFECTIVE DATES

Present law

No provision.

House bill

The amendments and repeals made by this title take effect on October 1, 1995. The authority to reduce assistance for certain families that include a child whose paternity is not established will begin 1 year after the effective date or, at the option of the State, 2 years after the effective date.

Amendments made by Title I (Block Grants for Temporary Assistance for Needy Families) shall not apply to powers, duties, functions, rights, claims, penalties, or obligations applicable to aid, or services provided (under AFDC) before the effective date of the Act. Nor shall amendments of the bill apply to administrative actions and proceedings commenced or authorized before the effective date of the bill.

Senate amendment

AFDC is repealed effective October 1, 1995. Family assistance block grant provisions also take effect October 1, 1995 (except for penalties, most of which are effective October 1, 1996), but expire on September 30, 2000. A State may continue to operate its AFDC program for 9 months, until June 30, 1996. If it does so, its fiscal year 1996 cash block grant under the new program shall be reduced by the amount of Federal matching funds received for that year for AFDC expenditures.

Conference agreement

The conference agreement follows the Senate amendment.

10. MISCELLANEOUS

A. COUNTY AUTHORITY FOR DEMONSTRATION PROJECTS

Present law

No provision.

House bill

No provision.

Senate amendment

Requires the DHHS Secretary and the Agriculture Secretary jointly to enter into negotiations with all counties having a population greater than 500,000 that desire to conduct a demonstration project in which: (1) the county shall have the authority and duty to administer the operation of the family assistance program as if the county were considered a State; (2) the State shall pass through directly to the county the portion of the block grant that the State determines is attributable to the residents of the county; and (3) the project shall last 5 years.

To be eligible: (1) a county already must be administering the Title IV–A program; (2) must represent less than 25 percent of the State's total welfare caseload; and (3) the State must have more than one county with a population of greater than 500,000.

Not later than 6 months after the end of a county demonstration project, the two Secretaries shall send a report to Congress that includes a description of the project, its rules, and innovations (if any).

Conference agreement

The conference agreement follows the House bill.

B. COLLECTION OF OVERPAYMENTS FROM FEDERAL TAX REFUNDS

Present law

No provision.

House bill

No provision.

Senate amendment

Requires the Treasury Secretary, upon notification from a State that it has overpaid a former recipient of temporary cash assistance and has attempted unsuccessfully to collect the overpayment, to collect the sum from Federal tax refunds.

Conference agreement

The conference agreement follows the Senate amendment.

C. TAMPER-PROOF SOCIAL SECURITY CARD

Present law

No provision.

House bill

No provision.

Senate amendment

Requires the Commissioner of Social Security to develop a prototype of a counterfeit-resistant social security card. The card must be made of a durable, tamper-resistant material such as plastic or polyester, employ technologies that provide security features, and be developed so as to provide individuals with reliable proof of citizenship or legal resident alien status. The Commissioner is to report to Congress on the cost of issuing a tamper-proof card for all persons over a 3-, 5-, and 10-year period. Copies of the report, along with a facsimile of the prototype card, shall be submitted to the Committees on Ways and Means and Judiciary of the House and the Committees on Finance and Judiciary of the Senate within one year of enactment.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

D. DISCLOSURE OF RECEIPT OF FEDERAL FUNDS

Present law

No provision.

House bill

No provision.

Senate amendment

Requires disclosure of specified public funds received by 501(c) organizations, which are non-profit and tax-exempt. When a 501(c) organization that accepts Federal funds under the Work Opportunity Act makes any communication that intends to promote public support or opposition to any governmental policy (Federal, State or local) through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public advertising, the communication must state: "This was prepared and paid for by an organization that accepts taxpayer dollars".

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

E. PROJECTS TO EXPAND JOB OPPORTUNITIES FOR CERTAIN LOW-INCOME INDIVIDUALS (JOLI)

Present law

The Family Support Act of 1988 (Sec. 505) directed the Secretary to enter into agreement with between 5 and 10 nonprofit organizations to conduct demonstrations to create job opportunities for AFDC recipients and other low-income persons. For these projects, $6.5 million was authorized to be appropriated for each fiscal year, 1990–1992.

House bill

No provision.

Senate amendment

Strikes the word "demonstration" from the description of these projects and converts them to grant status. It requires the Secretary to enter into agreements with nonprofit organizations to conduct projects to create job opportunities for recipients of family assistance and other persons with income below the poverty guideline. It authorizes appropriations of $25 million annually for these projects.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

F. DEMONSTRATION PROJECTS TO EXPAND USE OF SCHOOLS

Present law

The 21st Century Community Learning Centers Act (established by P.L. 103–382) makes available funds directly to rural or inner-city schools, or consortia of them, to act as centers for providing education and human resources services. Services allowed include: literacy education, parenting skills education, employment counseling, training and placement. The Elementary and Secondary Education Act includes a program called "Extended Time for Learning and Longer School Year," which supports local educational agencies' efforts to lengthen learning time. Grantees may engage other community members in these efforts.

House bill

No provision.

Senate amendment

The Secretary of Education is required to make grants to not more than 5 States for demonstration grants to increase the number of hours when public school facilities are available for use. Schools selected must have a significant percentage of students receiving family assistance benefits. The longer hours are intended to enable volunteers and parents or professionals paid from other sources to teach, tutor, coach, organize, advise, or monitor students. Grants are intended also to make school facilities available for clubs, civic associations, Boy and Girl Scouts and other groups. The amendment authorizes $10 million annually (FYs 1996–2000) for grants plus $1 million annually for administration by the Secretary.

Conference agreement

The conference agreement follows the House bill.

G. SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL FOR TECHNICAL AND CONFORMING AMENDMENTS

Present law

No provision.

House bill

No provision.

Senate amendment

Not later than 90 days after enactment of this Act, the Secretary must submit to the appropriate committees of Congress a legislative proposal providing for technical and conforming amendments.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

SUBTITLE B—SUPPLEMENTAL SECURITY INCOME

CHAPTER 1—ELIGIBILITY RESTRICTIONS

1. DENIAL OF SUPPLEMENTAL SECURITY INCOME BENEFITS BY REASON OF DISABILITY TO DRUG ADDICTS AND ALCOHOLICS

A. IN GENERAL

Present law

Individuals whose drug addiction or alcoholism is a contributing factor material to their disability are eligible to receive SSI cash benefits for up to three years if they meet SSI income and resource requirements. These recipients must have a representative payee, must participate in an approved treatment program when available and appropriate, and must allow their participation in a treatment program to be monitored. Medicaid benefits continue beyond the 3-year limit, as long as the individual remains disabled, unless the individual was expelled from SSI for failure to participate in a treatment program.

House bill

Under the House provision, an individual is not considered disabled if drug addiction or alcoholism is a contributing factor material to his or her disability. Individuals with drug addiction and/or alcoholism who cannot qualify based on another disabling condition will not be eligible for SSI benefits.

Senate amendment

Identical to House bill.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

B. REPRESENTATIVE PAYEE REQUIREMENTS

Present law

SSI law requires that the SSI payments of individuals whose drug addiction or alcoholism is a contributing factor material to their disability must be made to another individual, or an appropriate public or private organization (i.e., the individual's "representative payee") for the use and benefit of the individual or eligible spouse.

House bill

No provision.

Senate amendment

Under the Senate amendment, if a disabled person also has an alcoholism or drug addiction condition (as determined by the Commissioner of Social Security), their SSI checks must be sent to a representative payee.

Conference agreement

The conference agreement generally follows the Senate amendment with modification to require that a representative payee be appointed only in those cases in which the Commissioner determines that payment to a representative payee would serve the interest of the beneficiary because such individual also has an alcoholism or drug addiction condition that prevents such individual from managing his or her own benefits.

C. TREATMENT REFERRALS FOR INDIVIDUALS WITH AN ALCOHOLISM OR DRUG ADDICTION CONDITION

Present law

Federal law requires SSI recipients whose drug addiction or alcoholism is a contributing factor material to their disability to undergo appropriate treatment, if it is available.

House bill

No provision.

Senate amendment

The Senate amendment requires the Commissioner of Social Security to refer to the appropriate State agency administering the State plan for substance abuse services any disabled SSI recipient who is identified as having an alcoholism or drug addiction condition. Any individual who refuses to accept the referred services without good cause is no longer eligible for SSI benefits.

Conference agreement

The conference agreement follows the Senate amendment with modification to require that only those SSI disability recipients who are unable to manage their own benefits as a result of an alcoholism or drug addiction condition be referred to the State agencies administering such treatment. While additional treatment funds are being provided to States in a separate provision, it is not the intent of the conferees that States are required to provide treatment.

Although this legislation eliminates drug addiction and alcoholism as the basis for awarding disability benefits to an SSI claimant, the conferees believe it is important that SSI recipients with severe drug or alcohol abuse continue to be referred to treatment sources. While the conferees do not expect that the Commissioner will routinely inquire in all representative payee cases whether drug addiction or alcoholism causes an individual's inability to manage his or her own affairs, it is expected that whenever there is any indication that this may be the case, the Commissioner will investigate to determine whether referral is appropriate.

D. CONFORMING AMENDMENTS

E. FUNDING OF CERTAIN PROGRAMS FOR DRUG ADDICTS AND ALCOHOLICS

Present law

SSI cash benefits are limited to 3 years for recipients whose drug addiction or alcoholism is a contributing factor material to their disability. These individuals must undergo "appropriate substance abuse treatment." While the Social Security Administration currently contracts with agencies for referral, monitoring and reporting of compliance with treatment, it does not pay for treatment. Medicaid benefits are to continue beyond the 3-year limit, as long as the individual remains disabled, unless the individual was expelled from SSI for noncompliance with treatment.

House bill

For four years beginning with fiscal year 1997, $100 million of the savings realized from denying cash SSI payments and Medicaid coverage to individuals whose drug addiction or alcoholism is a contributing factor material to their disability will be targeted to drug treatment and drug abuse research. Each year, $95 million will be expended through the Federal Capacity Expansion Program (CEP) to expand drug treatment availability and $5 million will be allocated to the National Institute on Drug Abuse to be expended solely on the medication development project to improve drug abuse and drug treatment research.

Senate amendment

For two years beginning with fiscal year 1997, $50 million will be spent to fund additional drug (including alcohol) treatment programs and services through Substance Abuse Prevention and Treatment Block Grant. The conferees expect that States will use funds made available under this provision to provide treatment to current and former SSI recipients as their first priority.

Conference agreement

The conference agreement follows the Senate amendment.

F. EFFECTIVE DATE

Present law

Not applicable.

House bill

This section of the bill becomes effective on October 1, 1995, and applies with respect to months beginning on or after that date.

Senate amendment

Generally, changes apply to applicants for benefits for months beginning on or after the date of enactment. An individual receiving benefits on the date of enactment whose eligibility would end would continue to be eligible for benefits until January 1, 1997. The Commissioner of Social Security shall notify individuals losing eligibility within three months of the date of enactment.

In addition, in the case of an individual with an alcoholism or drug addiction condition who is receiving SSI benefits on the date of enactment, the representative payee requirement will apply on or after the first continuing disability review occurring after enactment. For recipients with an addiction who are over the age of 65, the Commissioner will determine appropriate representative payee requirements.

Conference agreement

The conference agreement follows the Senate amendment with modification that the referral to treatment requirement for an individual with an alcoholism or drug addiction condition receiving benefits on the date of enactment will apply on or after the first continuing disability review occurring after enactment.

REAPPLICATION

Present law

Not applicable.

House bill

No provision.

Senate amendment

Individuals receiving SSI benefits on the date of enactment who are notified of their termination of eligibility and who desire to reapply for benefits must do so within four months after the date of enactment. The Commissioner of Social Security will determine within one year after the date of enactment the eligibility of individuals who reapply.

Conference agreement

The conference agreement generally follows the Senate amendment with technical modification.

2. DENIAL OF SSI BENEFITS FOR 10 YEARS TO INDIVIDUALS FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN BENEFITS SIMULTANEOUSLY IN 2 OR MORE STATES

Refer to Title I.

3. DENIAL OF SSI BENEFITS FOR FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATIONS

Refer to Title I.

CHAPTER 2—BENEFITS FOR DISABLED CHILDREN

1. DEFINITION AND ELIGIBILITY RULES

A. DEFINITION OF CHILDHOOD DISABILITY

COMPARABLE SEVERITY REPEALED

Present law

A needy individual under age 18 is determined eligible for SSI "if he suffers from any medically determinable physical or mental impairment of comparable severity" with that of an adult considered work disabled and otherwise eligible for SSI benefits.

House bill

The "comparable severity" test in statute for determining disability of children (defined as individuals under 18) is repealed.

Senate amendment

Similar to the House bill.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

DISABILITY DEFINITION

Present law

There is no definition of childhood disability in the statute. Under current disability evaluation procedures, to be found disabled, a child must have a medically determinable physical or mental impairment that substantially reduces his or her ability to independently and effectively engage in age-appropriate activities. This impairment must be expected to result in death or to last for a continuous period of not less than 12 months.

House bill

Eligibility, as determined by the Commissioner of Social Security, for cash benefits or new medical or non-medical services described below will be based solely on: (1) meeting the non-disability-related requirement for eligibility; (2) meeting or equalling the current Listing of Impairments set forth in the Code of Federal Regulations (i.e., the Listing which is currently in regulations is to be codified in statute); and (3) being a disabled SSI recipient in the month prior to this provision's effective date or being in a hospital, skilled nursing facility, residential treatment facility, intermediate care facility for the mentally retarded, or otherwise would be placed in such a facility if the child were not receiving personal assistance necessitated by the impairment. Personal assistance refers to assistance with activities of daily living such as eating and toileting.

Senate amendment

Adds a new statutory definition of childhood disability. An individual under the age of 18 is considered disabled for the purposes of this section if the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

Conference agreement

The conference agreement follows the Senate amendment with technical modification and provides that the Commissioner of Social Security shall submit for review to the committees of jurisdiction in the Congress any final regulation with supporting documentation pertaining to the eligibility of individuals under age 18 for SSI benefits at least 45 days before the effective date of such regulation.

By this definition, the conferees intend that only needy children with severe disabilities be eligible for children's SSI and that the Listing and other disability determination regulations as modified by the conference agreement properly reflect the severity of disability contemplated by the statutory definition. In those areas of the Listing that involve domains of functioning, the conferees expect no less than two marked limitations in no fewer than two domains or extreme limitations in at least one domain as the standard for qualification. The conferees are also aware that the Social Security Administration uses the term "severe" to often mean "other than minor" in an initial screening procedure for disability determination and in other places. The conferees, however, use the term "severe" in its common sense meaning.

The conferees do not intend to suggest by this definition of childhood disability that every child need be especially evaluated for functional limitations, or that this definition creates a supposition for any such examination. Under current procedures for writing individual listings, level of functioning is an explicit consideration in deciding which impairment, with what medical or other findings, are of sufficient severity to be included in the Listing. Nonetheless, the conferees do not intend to limit the use of functional assessments and functional information, if reflecting sufficient severity and are otherwise appropriate.

B. CHANGES TO CHILDHOOD SSI REGULATIONS

RELIANCE ON "LISTING OF IMPAIRMENTS"

Present law

Under the disability determination process for children, individuals whose impairments do not meet or equal the "Listing of Impairments" in Federal regulations are subject to an "Individualized Functional Assessment (IFA)". This assessment examines whether the child can engage in age-appropriate activities effectively. If the child cannot, he or she is determined disabled.

House bill

The Commissioner of Social Security must annually report to Congress on the Listings and recommend any needed revisions. Individualized functional assessments are no longer grounds for determination of disability.

Senate amendment

The Commissioner of Social Security shall discontinue the individualized functional assessment for children set forth in the Code of Federal Regulations.

Conference agreement

The conference agreement follows the Senate amendment. The conferees agree that a significant amount of the growth of the children's SSI program resulted from regulations issued in 1991 by the Social Security Administration establishing the individualized functional assessment which liberalized program eligibility criteria beyond Congressional intent. Children with modest conditions or impairments were made eligible for SSI due to the individualized functional assessment, and therefore should not be eligible for SSI benefits.

MULTIPLE REFERENCES TO "MALADAPTIVE BEHAVIOR" ELIMINATED

Present law

Under the disability determination process for children, the Social Security Administration first determines if a child meets or equals the Listings of Impairments. Under the Listings that relate to mental disorders, maladaptive behavior may be scored twice, in domains of social functioning and of personal/behavior functioning.

House bill

No provision.

Senate amendment

Requires the Commissioner of Social Security to eliminate references in the Listing to maladaptive behavior among medical criteria for evaluation of mental and emotional disorders in the domain of personal/behavioral function.

Conference agreement

The conference agreement follows the Senate amendment.

C. AMOUNT OF BENEFITS

Present law

A child who is determined to be disabled and who is eligible on the basis of his income and resources shall be paid benefits. If the child lives at home, the parents' financial resources are deemed available to the child. If the same child is institutionalized, after the first month away from home only the child's own financial resources are deemed to be available for the child's care. The child may then qualify for a reduced ("personal needs allowance") SSI benefit and for Medicaid coverage. Because of these "deeming" rules, some children who could have been cared for at home might remain in institutions because, if they were to return home, they would lose Medicaid benefits. Medicaid "waivers" allow States to disregard the deeming rule, provide Medicaid coverage, and pay for support services to help families keep children at home.

House bill

Children may be eligible for cash SSI payments in one of three circumstances:

(1) if a child who is currently (defined as during the month prior to the first month for which this provision takes effect) receiving cash SSI payments by reason of disability will continue to be eligible for cash SSI benefits if the child has an impairment that meets or equals an impairment specified in the Listing of Impairments. Children receiving cash benefits under the grandfather provision whose financial eligibility is suspended would continue to receive cash benefits if financial eligibility is restored;

(2) for all other children, a child may only receive cash SSI payments if the child has an impairment which meets or equals an impairment specified in the Listings of Impairments cited above, and is either in a hospital, skilled nursing facility, residential treatment facility, intermediate care facility for the mentally retarded, or otherwise would be placed in such a facility if the child were not receiving personal assistance necessitated by the impairment. Personal assistance refers to assistance with activities of daily living such as eating and toileting; and

(3) if a child who is overseas as a dependent of a member of the U.S. Armed Forces and who is eligible for block grant services but not eligible for cash benefits under the new criteria shall be eligible for cash benefits. Cash benefits cease when the child returns to the United States.

Senate amendment

No provision.

Conference agreement

The conference agreement follows a modified version of the House bill. Once an eligible child is determined to meet the definition of disability, the amount of the individual's cash benefit will be based on whether the child meets the newly developed criteria for needing personal assistance enabling the child to remain with their family at home. This criteria is as follows:

For a child under age 6—such individual has a medical impairment that severely limits the individual's ability to function in a manner appropriate to individuals of the same age and who without special personal assistance would require specialized care outside the individual's home; or

For a child age 6 or over—such individual requires personal care assistance with: (a) at least two activities of daily living, (b) continual 24-hour supervision or monitoring to avoid causing injury or harm to self or others, or (c) the administration of medical treatment; and who without such assistance would require full-time or part-time specialized care outside the individual's home.

The conferees have provided a different definition of the eligibility for children under age 6 and over age 6 because of the differing expectations of age appropriate behavior for children above and below this age. As described below, the conferees have requested the Commissioner of Social Security to undertake a study on ways to improve these definitions and the disability determination process.

Children with disabilities meeting this criteria will receive 100 percent of the benefit amount provided by current law. Disabled children who do not meet this criteria will receive seventy-five percent of the benefit amount provided by current law. The conferees note that the SSI benefit under either tier is very generous. In 1995, the average SSI benefit for a child recipient is $5,040. Seventy-five percent of that benefit would be $3,780. Both the maximum children's SSI benefit or seventy-five percent of the maximum benefit is greater than the maximum 1995 AFDC benefit for a family of three in many States.

The conferees acknowledge that many families of disabled children incur expenses beyond those by families of nondisabled children. However, the conferees agree that the extra expenses related to a child's disability vary widely depending on the nature and degree of disability and the availability of Federal, State, and local health care and/or disability programs. In order to reduce the inequity of the current system which provides one benefit level to all families without regard to additional disability-related financial needs, the conferees agree to establish a two-tiered benefit system. The higher tier is intended for families of children with the most severe disabilities who require full or part-time personal assistance which would prevent a parent from working full-time or which would require the presence of a personal assistance provider.

The conferees also believe that Congress should investigate whether the unmet needs of families of disabled children could be better and more efficiently met through services, such as mental health treatment or purchase of items of assistive technology, rather than cash payments. In the twenty three years since the SSI program was created, substantial new Federal programs have been authorized to assist children with disabilities, including Federal, State and local funding of special education and expansion of Medicaid. The impact of these programs on cash needs of children with disabilities merits further investigation by Congress. In order to have better data on the cost incurred by a family with a disabled child, the conferees request that the General Accounting Office undertake a study of the extra expenses incurred by such families with a child receiving SSI benefits, including what expenses are covered by other benefits such children receive through Federal, State, and local programs, and the lost income to families because of care they provide their child.

Lastly, the conferees remain concerned about the adequacy of the Listing of Impairments. The conferees strongly urge the Social Security Administration to contract with the National Academy of Sciences, or another independent entity, to conduct a study aimed at improving both the process of disability determination and the validity of the Listing of Impairments in light of current scientific knowledge.

D. EFFECTIVE DATE

Present law

Not applicable.

House bill

Changes apply to benefits for months beginning ninety or more days after enactment, without regard to whether regulations have been issued. Recipients of SSI cash benefits during the month of enactment who would lose eligibility under the House bill may continue to receive SSI benefits for up to 6 months.

Senate amendment

The Senate amendment changes apply to applicants for months beginning on or after the date of enactment, without regard to whether regulations have been issued. However, the Commissioner must issue necessary regulations within two months of enactment. For child SSI recipients who were eligible for SSI on the date of enactment but who would lose eligibility under the Senate amendment, the changes would not take effect until January 1, 1997. The Commissioner is to redetermine the eligibility of these persons within one year of enactment.

Conference agreement

The conference agreement follows the Senate amendment with modification that the effective date for the two-tiered benefit system is January 1, 1997, for current recipients and new applications. The conferees agreed to require the Commissioner to report to Congress within 180 days regarding the progress made in implementing the SSI children's provisions, however this provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

NOTICE

Present law

Not applicable.

House bill

Not later than one month after the date of enactment, the Commissioner must notify individuals whose eligibility for SSI benefits will terminate.

Senate amendment

Within three months of enactment, the Commissioner must notify individuals whose eligibility for SSI benefits will terminate.

Conference agreement

The conference agreement follows the Senate amendment.

NEW PROVISION FOR ADMINISTRATIVE FUNDS FOR THE SOCIAL SECURITY ADMINISTRATION

Present law

Not applicable.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conferees recognize that implementation of the SSI provisions by the Social Security Administration is a big job and have provided $300 million to assist the agency meeting their obligations. The conferees are very mindful of the problems encountered by the Social Security Administration in the early 1980s in conducting a large number of redeterminations and continuing disability reviews, and strongly urge the Commissioner to conduct the redeterminations and continuing disability reviews required in this bill in an orderly and careful manner.

BLOCK GRANTS TO STATES FOR CHILDREN WITH DISABILITIES

ENTITLEMENT TO GRANTS

Present law

Not applicable.

House bill

Each State that meets the requirements listed below for fiscal year 1997 or later years shall be entitled to receive a grant equal to the State's allotment for that fiscal year. The Commissioner of Social Security will make block grants to States for the purpose of providing specified medical and non-medical benefits for children who have an impairment which meets or equals an impairment specified in the Listing of Impairments. Grants are an entitlement to eligible States on behalf of qualifying children, not an entitlement to any such child.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision).

REQUIREMENTS

Present law

Not applicable.

House bill

Each State must establish a program to provide block grant services. The State will submit to the Commissioner an application for the grant. In the application, the State agrees it must spend grant funds to provide authorized services designed to meet the unique needs of qualifying children. The application must also contain information, agreements, and assurances required by the Commissioner. In providing authorized services, States will make every reasonable effort to obtain payment for the services from other Federal or State programs that provide such services. States will expend the grant only to the extent that payments from other programs are not available.

In order to receive a block grant under this section, the State must agree to maintain non-Federal spending for any purposes designed to meet the needs of qualifying children with physical or mental impairments. States have discretion to select the purposes for which the State expends non-Federal amounts, within the purposes of providing for the needs of qualifying children. The Consumer Price Index will be used to adjust for inflation in judging whether the State meets the maintenance of effort requirements in future years.

No child who has an impairment which meets or equals an impairment specified in the Listing of Impairments will be denied the opportunity to apply for services and to have his or her case assessed to determine the child's service needs.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision).

AUTHORITY OF STATE

Present law

Not applicable.

House bill

The following decisions are in the discretion of a State:

(1) which authorized services to provide;

(2) who among qualifying children receives services; and

(3) the number of services provided a qualifying child and their duration.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision).

AUTHORIZED SERVICES

Present law

Not applicable.

House bill

The Commissioner shall issue regulations designating the purposes for which grants may be spent by States. The Commissioner must ensure that services on the list are designed to meet the unique needs of qualifying children that arise from their physical and mental impairments, that both medical and non-medical services are included, and that cash assistance is not available through the block grant.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision).

GENERAL PROVISIONS

Present law

Not applicable.

House bill

Necessary regulations are to be issued, but payments under the block grant must begin not later than January 1, 1997, regardless of whether final rules have been issued.

The value of the authorized services provided through the block grant cannot be taken into account in determining eligibility for, or the amount of, benefits or services under any Federal or Federally-assisted program. For the purposes of Medicaid, each qualifying child shall be considered to be a recipient of Supplemental Security Income benefits under this title.

States are encouraged to use an existing delivery system to administer block grant services.

States that do not participate in offering block grant services are not permitted to use social security numbers in the administration of any tax, public assistance, driver's license or motor vehicle registration law. (Because of the extreme duress this would impose on States, this is regarded as effectively a "requirement.")

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision).

DEFINITIONS

Present law

Not applicable.

House bill

A State's "Allotment" of block grant funds equals the product of 75 percent of the average cash SSI benefit in the State and the number of children in the State receiving non-cash SSI benefits under this section.

"Authorized Service" means each service authorized by the Commissioner.

A "Qualifying Child" means an individual under 18 years of age who is eligible for cash benefits under this title by reason of disability; or an individual under 18 years of age who is eligible for SSI non-cash benefits as described above. The Commissioner will determine whether individuals meet the criteria to be eligible for block grant services.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision).

EFFECTIVE DATE

Present law

Not applicable.

House bill

Block grants are available to eligible States beginning in fiscal year 1997.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision).

2. ELIGIBILITY REDETERMINATIONS AND CONTINUING DISABILITY REVIEWS

A. CONTINUING DISABILITY REVIEWS FOR CERTAIN CHILDREN

Present law

Federal law requires that SSI recipients be subject to a Continuing Disability Review (CDR) at least once every 3 years, except for recipients whose impairments are judged to be permanent. The Commissioner is required to conduct periodic CDRs of at least 100,000 disabled SSI recipients per year for a period of 3 years (i.e., fiscal year 1996–1998) and report to Congress on CDRs for disabled SSI recipients no later than October 1, 1998.

House bill

In addition to the provisions of current law, at least once every 3 years the Commissioner must conduct CDRs for SSI benefits of children receiving benefits. For children who are eligible for benefits and whose medical condition is not expected to improve, the requirement to perform such reviews does not apply.

Senate amendment

Same as the House bill, with minor differences in wording. At the time of review the parent or guardian must present evidence demonstrating that the recipient is and has been receiving appropriate treatment for his or her disability.

Conference agreement

The conference agreement generally follows the Senate amendment with modification requiring evidence of needed treatment for continued representative payee status.

B. DISABILITY REVIEW REQUIRED FOR SSI RECIPIENTS WHO ATTAIN 18 YEARS OF AGE

Present law

Current law also specifies that the Commissioner must reevaluate under adult disability criteria the eligibility of at least one-third of SSI children who turn age 18 in each of the fiscal years 1996, 1997, and 1998 (the CDR must be completed before these children reach age 19) and report to Congress no later than October 1, 1998, on CDRs for disabled children.

House bill

The eligibility for all children qualifying for SSI benefits must be redetermined using the adult criteria within one year after turning 18 years of age. The review will be considered a substitute for any other review required under the changes made in this section.

Not later than October 1, 1998, the Commissioner of Social Security must submit to the House Committee on Ways and Means and the Senate Committee on Finance a report on disability reviews for children enrolled in SSI.

The "minimum number of reviews" and the "sunset" provisions of section 207 of the Social Security Independence and Program Improvements Act of 1994 are eliminated.

Senate amendment

Same as the House bill with differences in wording. Like the House bill, the Senate amendment repeals section 207 of the Social Security Independence and Program Improvements Act of 1994.

Conference agreement

The conference agreement generally follows the House bill with modification that the Commissioner does not have to submit a report to Congress on disability reviews for SSI children.

C. DISABILITY REVIEW REQUIRED FOR LOW BIRTH WEIGHT BABIES WHO HAVE RECEIVED SSI BENEFITS FOR 12 MONTHS

Present law

Not applicable.

House bill

A review for continuing disability must be performed for all children qualifying for SSI due to low birth weight when the child has received benefits for 12 months.

Senate amendment

A review must be conducted 12 months after the birth of a child whose low birth weight is a contributing factor to the child's disability. At the time of review, the parent or guardian must present evidence demonstrating that the recipient is and has been receiving appropriate treatment for his or her disability.

Conference agreement

The conference agreement follows the Senate amendment with modification requiring evidence of needed treatment for continued representative payee status.

D. EFFECTIVE DATE

Present law

Not applicable.

House bill

This section applies to benefits for months beginning ninety or more days after enactment, regardless of whether regulations have been issued.

Senate amendment

Applies to benefits for months beginning on or after the date of enactment, regardless of whether regulations have been issued.

Conference agreement

The conference agreement follows the Senate amendment.

3. ADDITIONAL ACCOUNTABILITY REQUIREMENTS

A. DISPOSAL OF ASSETS

Present law

No provision. There is a transfer of assets provision in Medicaid law that is similar to H.R. 4 provision (Sec. 1917(c) of the Social Security Act).

House bill

The House bill delays eligibility for any child applicant whose parents or guardians, in order to qualify a child for benefits, dispose of assets for less than fair market value within 36 months of the date of application. The provision stipulates that any assets in a trust in which the child (i.e., parent or representative payee) has control shall be considered assets of the child and subject to the 36-month "look-back" rule. The delay (in months) is equal to the amount of assets divided by the SSI standard benefit.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with technical modifications.

REQUIREMENT TO ESTABLISH ACCOUNT

Present law

Not applicable.

House bill

No provision.

Senate amendment

At the request of the representative payee (i.e., the parent), the Commissioner of Social Security may pay any lump sum payment for the benefit of a child into a dedicated savings account for the purpose of covering the costs of needs related to the child's disability and/or increasing the child's independence. The dedicated savings account could only be used to purchase education and job skills training, special equipment or housing modifications related to the child's disability, and appropriate therapy and rehabilitation. The funds in these accounts would not be counted as resources in determining SSI eligibility. This provision would take effect upon enactment.

Conference agreement

The conference agreement generally follows the Senate amendment with modification requiring the dedicated savings account (instead of it being optional at the request of the representative payee), expanding the list of allowable expenses, and requiring the Commissioner to establish a system for accountability monitoring.

CONFORMING AMENDMENTS

Present law

Not applicable.

House bill

The House bill makes a number of conforming amendments, reflecting the addition of non-cash SSI benefits as described above.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate Amendment (i.e., no provision).

IMPROVEMENTS TO DISABILITY EVALUATIONS FOR CHILDREN

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Senate amendment directs the Commissioner of Social Security, within sixty days of enactment, to issue a request for comments in the Federal Register regarding improvements in the disability evaluation and determination procedures for children under age 18. The Commissioner must review the comments and issue regulations implementing changes within 18 months after enactment.

Conference agreement

The conference agreement follows the House bill (i.e., no provision).

TEMPORARY ELIGIBILITY FOR CASH BENEFITS FOR POOR DISABLED CHILDREN RESIDING IN STATES APPLYING ALTERNATIVE INCOME ELIGIBILITY STANDARDS UNDER MEDICAID

Present law

States generally are required to provide Medicaid coverage for recipients of SSI. However, States may use more restrictive eligibility standards for Medicaid than those for SSI if they were using those standards on January 1, 1972 (before implementation of SSI). States that have chosen to apply at least one more restrictive standard are known as "section 209(b)" States, after the section of the Social Security Amendments of 1972 (P.L. 92–603) that established the option. These States may vary in their definition of disability, or in their standards related to income or resources. There are 12 section 209(b) States: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, and Virginia.

House bill

The House bill provides for temporary eligibility for cash SSI benefits (through the end of fiscal year 1996) for children who live in States that apply alternative income eligibility standards under Medicaid (also known as "209(b)" States).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision).

4. REDUCTION OF CASH BENEFITS PAYABLE TO INSTITUTIONALIZED CHILDREN WHOSE MEDICAL COSTS ARE COVERED BY PRIVATE INSURANCE

Present law

Federal law stipulates that when an individual enters a hospital or other medical institution in which more than half of the bill is paid by the Medicaid program, his or her monthly SSI benefit standard is reduced to $30 per month. This personal needs allowance is intended to pay for small personal expenses, with the cost of maintenance and medical care provided by the Medicaid program.

House bill

Cash SSI payments to institutionalized children would be reduced for those whose medical costs are covered by private insurance.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

ADDITIONAL ACCOUNTABILITY REQUIREMENTS FOR PARENTS OR GUARDIANS

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Senate amendment requires a disabled child's representative payee (usually the parent) to document expenditures. These expenditures would be subject to increased review by the Social Security Administration. Effective for benefits paid after enactment.

Conference agreement

The conference agreement follows the House bill (i.e., no provision).

5. REGULATIONS

Present law

Not applicable.

House bill

The Commissioner of Social Security and the Secretary of HHS will prescribe necessary regulations within three months after enactment of this Act.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

EXAMINATION OF MENTAL LISTINGS USED TO DETERMINE ELIGIBILITY OF CHILDREN FOR SSI BENEFITS BY REASON OF DISABILITY

Present law

Section 202 of the Social Security Independence and Program Improvements Act of 1994 established a Childhood Disability Commission to study the desirability and methods of increasing the extent to which benefits are used in the effort to assist disabled children in achieving independence and engaging in substantial gainful activity. The Commission was also charged with examining the effects of the SSI program on disabled children and their families.

House bill

The Childhood Disability Commission must review the mental listings used by the Social Security Administration to determine child SSI eligibility. The Commission should conduct this investigation to ensure that the criteria in these listings are appropriate and that SSI eligibility is limited to children with serious disabilities for whom Federal assistance is necessary to improve the child's condition or quality of life.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment (i.e., no provision) due to the Childhood Disability Commission having completed their final report.

LIMITATION ON PAYMENTS TO PUERTO RICO, THE U.S. VIRGIN ISLANDS AND GUAM UNDER PROGRAMS OF AID TO THE AGED, BLIND, OR DISABLED

Refer to Title I.

REPEAL OF MAINTENANCE OF EFFORT REQUIREMENT APPLICABLE TO OPTIONAL STATE PROGRAMS FOR SUPPLEMENTATION OF SSI BENEFITS

Present law

Since the beginning of the SSI program, States have had the option to supplement (with State funds) the Federal SSI payment. The purpose of section 1618 was to encourage States to pass along to SSI recipients the amount of any Federal SSI benefit increase. Under section 1618, a State that is found to be not in compliance with the "pass along/maintenance of effort provision" is subject to loss of its Medicaid reimbursements. Section 1618 allows States to comply with the "pass along/ maintenance of effort" provision by either maintaining their State supplementary payment levels at or above 1983 levels or by maintaining total annual expenditures for supplementary payments (including any Federal cost-of-living adjustment) at a level at least equal to the prior 12-month period, provided the State was in compliance for that period. In effect, section 1618 requires that once a State elects to provide supplementary payments it must continue to do so. [Sec. 1618 of the Social Security Act]

House bill

The House bill repeals the maintenance of effort requirements (Sec. 1618) applicable to optional State programs for supplementation of SSI benefits effective date of enactment.

Senate amendment

Similar to the House bill.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

LIMITED ELIGIBILITY OF NONCITIZENS FOR SSI BENEFITS

Refer to Title IV.

ANNUAL REPORT ON SSI

Present law

To date, the Department of Health and Human Services and now the Social Security Administration have collected, compiled, and published annual and monthly SSI data, but Federal law does not require an annual report on the SSI program.

House bill

No provision.

Senate amendment

The Senate amendment requires the Commissioner of Social Security to prepare and provide to the President and the Congress an annual report on the SSI program, which includes specified information and data. The report is due May 30 of each year.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

STUDY OF DISABILITY DETERMINATION PROCESS

Present law

Not applicable.

House bill

No provision.

Senate amendment

Within 90 days of enactment, the Commissioner must contract with the National Academy of Sciences or another independent entity to conduct a comprehensive study of the disability determination process for SSI and SSDI. The study must examine the validity, reliability and consistency with current scientific standards of the Listings of Impairments cited above.

The study must also examine the appropriateness of the definitions of disability (and possible alternatives) used in connection with SSI and SSDI; and the operation of the disability determination process, including the appropriate method of performing comprehensive assessments of individuals under age 18 with physical or mental impairments.

The Commissioner must issue interim and final reports of the findings and recommendations of the study within 18 months and 24 months, respectively, from the date of contract for the study.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

GENERAL ACCOUNTING OFFICE STUDY

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Senate amendment requires the General Accounting Office to study and report on the impact of title II of the Senate amendment on the SSI program by January 1, 1998.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

NATIONAL COMMISSION ON THE FUTURE OF DISABILITY

A. ESTABLISHMENT

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Commission is established and expenses are to be paid from funds appropriated to the Social Security Administration.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. DUTIES

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Commission must study all matters related to the nature, purpose and adequacy of all Federal programs for the disabled, and especially SSI and SSDI.

The Commission must examine: projected growth in the number of individuals with disabilities and the implications for program planning; possible performance standards for disability programs; the adequacy of Federal rehabilitation research and training; and the adequacy of policy research available to the Federal government and possible improvements.

The Commission must submit to the President and the proper Congressional committees recommendations and possible legislative proposals effecting needed program changes.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

C. MEMBERSHIP

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Commission is to be composed of 15 members, appointed by the President and Congressional leadership. Members are to be chosen based on their education, training or experience, with consideration for representing the diversity of individuals with disabilities in the U.S.

The Comptroller General must serve as an ex officio member of the Commission to advise on the methodology of the study. With the exception of the Comptroller General, no officer or employee of any government may serve on the Commission.

Members are to be appointed not later than 60 days after enactment. Members serve for the life of the Commission, which will be headquartered in D.C. and meet at least quarterly.

The Senate amendment includes a number of specific requirements on the Commission regarding quorums, the naming of chairpersons, member replacement, and benefits.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

D. STAFF AND SUPPORT SERVICES

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Commission will have a director, appointed by the Chair, and appropriate staff, resources, and facilities.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

E. POWERS

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Commission may conduct public hearings and obtain information from Federal agencies necessary to perform its duties.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

F. REPORTS

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Commission must issue an interim report to Congress and the President not later than 1 year prior to terminating. A final public report must be submitted prior to termination.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

G. TERMINATION

Present law

Not applicable.

House bill

No provision.

Senate amendment

The Commission will terminate 2 years after first having met and named a chair and vice chair.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

CHAPTER 6—RETIREMENT AGE ELIGIBILITY

13. ELIGIBILITY FOR SSI BENEFITS BASED ON SOCIAL SECURITY RETIREMENT AGE

Present law

The SSI program guarantees a minimum level of cash income to all aged, blind, or disabled persons with limited resources. The SSI program defines "aged" as persons age 65 and older.

House bill

No provision.

Senate amendment

The Senate amendment deletes references to age 65 and instead defines as "aged" those persons who reach "retirement age" as defined by the Social Security program. The Social Security "retirement age"—the age at which retired workers receive benefits that are not reduced for "early retirement"—gradually will rise from 65 to 67. It will do so in two steps. First, the retirement age will increase by 2 months for each year that a person was born after 1937, until it reaches age 66 for those born in 1943 (i.e., those who attain age 66 in 2009). Second, it will again increase by 2 months for each year that a person was born after 1954 until it reaches age 67 for those born after 1959.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

SUBTITLE C—CHILD SUPPORT ENFORCEMENT

CHAPTER 1—ELIGIBILITY FOR SERVICES; DISTRIBUTION OF PAYMENTS

1. REFERENCES

Present law

No provision.

House bill

Any reference in this title expressed in terms of an amendment to or repeal of a section or other provision is made to the Social Security Act.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

2. STATE OBLIGATION TO PROVIDE CHILD SUPPORT ENFORCEMENT SERVICES

Present law

States are required to establish paternity for children born out of wedlock if they are recipients of AFDC or Medicaid, and to obtain child and spousal support payments from noncustodial parents of children receiving AFDC, Medicaid benefits, or foster care maintenance payments. States must provide child support collection or paternity determination services to persons not otherwise eligible if the person applies for services. Federal law requires States to cooperate with other States in establishing paternity (if necessary), locating absent parents, collecting child support payments, and carrying out other child support enforcement functions.

House bill

States must provide services, including paternity establishment and establishment, modification, or enforcement of support obligations, for children receiving benefits under part A (Temporary Assistance for Needy Families block grant-TANF), part B (child protection block grant), Medicaid, and any child of an individual who applies for services. States must enforce support obligations with respect to children in their caseload and the custodial parents of such children. States must also make child support enforcement services available to nonresidents on the same terms as to residents. The provision also makes minor technical amendments to SSA section 454.

Senate amendment

Similar to House provision with one exception: instead of reference to part B as in House bill, reference is to part E-foster care and adoption assistance.

Conference agreement

The conference agreement follows the House bill and Senate amendment except the House recedes by agreeing States be required to provide child support services only to children actually receiving foster care payments.

3. DISTRIBUTION OF CHILD SUPPORT COLLECTIONS

A. DISTRIBUTION OF COLLECTED SUPPORT

Present law

To receive AFDC benefits, a custodial parent must assign to the State her right to collect child support payments. This assignment covers current support and any arrearages, and lasts as long as the family receives AFDC. Federal law requires that child support collections be distributed as follows: First, up to the first $50 in current support is paid to the AFDC family (a "disregard" that does not affect the family's AFDC benefit or eligibility status). Second, the Federal and State governments are reimbursed for the AFDC benefit paid to the family in that month. Third, if there is money left, the family receives it up to the amount of the current month's child support obligation. Fourth, if there is still money left, the State keeps it to reimburse itself for any arrearages owed to it under the AFDC assignment (with appropriate reimbursement of the Federal share of the collection to the Federal government). If no arrearages are owed the State, the money is used to pay arrearages to the family; such moneys are considered income under the AFDC program and would reduce the family's AFDC benefit.

House bill

To receive funds from the Temporary Assistance for Needy Families (TANF) block grant, a custodial parents must assign to the State their right to child support payments. (p. 39) The bill ends the $50 child support disregard to (TANF) families. Families receiving cash assistance—States are given the option of passing the entire child support payment through to families. If States elect this option, they must pay the Federal share of the collection to the Federal government. Families that formerly received cash assistance—Current child support payments go to the family. Payments on arrearages that accrued before or after the custodial parent received cash assistance are paid to the family first if the family leaves welfare. Only after all arrearages owed to the custodial parent and children have been repaid are arrearages owed to the State and Federal government repaid. Payments on arrearages that accrued while the family received assistance must be retained by the State. The State is required to keep the State share of the collected amount, and pay to the Federal government the Federal share of the amount collected (to the extent necessary to reimburse amounts paid to the family as cash assistance). As a general rule, States must pay to the Federal government the Federal share of child support collections for parents on the Temporary Family Assistance program. This share is calculated using the State's Medicaid match rate in effect in 1995 or in subsequent years, whichever is greater. Families that never received cash assistance—All child support payments go directly to the family.

Senate amendment

Any rights to child support that were assigned to the State before the effective date of the amendment are to remain so assigned. Gives States the option of requiring TANF applicants and recipients to assign to the State their rights to child support payments. The amendment eliminates references (in both the TANF block grant title of the amendment and the CSE title) to the $50 child support disregard, but does not explicitly eliminate the $50 child support disregard. Families receiving cash assistance—States are given the option of passing the entire child support payment through to families. If States elect this option, they must pay the Federal share of the collection to the Federal government. Families that formerly received cash assistance—Current child support payments go to the family. Payments on arrearages that accrued after the custodial parent left welfare are paid to the family. With respect to payments on arrearages that accrued before or while the family received assistance, the State may retain all or part of the State share, and if the State does so, it must retain and pay to the Federal Government the Federal share (to the extent the amount retained does not exceed the cash assistance paid to the family). The Federal share is calculated using the State's Medicaid match rate in effect in 1995 or in subsequent years, whichever is greater. Families that never received cash assistance—All child support payments go directly to the family. In addition, in the case of a family receiving cash assistance from an Indian tribe, the child support collection is to be distributed according to the agreement specified in the State plan.

Conference agreement

The conference agreement modifies the House bill and Senate amendment as follows: (1) the $50 passthrough is ended; (2) beginning October 1, 1997, arrearages that accumulate during the period after the family leaves welfare and that are paid through the tax intercept are paid to the State; payments made by any other method are paid to the family; and (3) beginning October 1, 2000, arrearages that accumulated during the period before the mother went on welfare and that are paid through the tax intercept are paid to the State; arrearage payments made by any other method are paid to the family. Conferees also agree that if the amount of pre-welfare arrearages paid to the family exceeds the amount saved by a given State by ending the $50 passthrough and by other methods of improving collections contained in this legislation, the Federal government will pay that State an amount equal to the difference between pre-welfare arrearage payments to the family and State savings caused by this legislation. Finally, child support assignment rules are modified to conform to the changes described above in distribution rules.

B. CONTINUATION OF SERVICES FOR FAMILIES CEASING TO RECEIVE ASSISTANCE

Present law

Federal law requires States to continue providing child support enforcement services to AFDC, Medicaid, and foster care families who no longer qualify for AFDC benefits on the same basis as in the case of those who receive benefits or services, except that no application or request for services is required.

House bill

When families leave the TANF program, States are required to continue providing child support enforcement services to them subject to the same conditions and on the same basis as in the case of individuals who receive assistance.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

C. EFFECTIVE DATE

Present law

No provision.

House bill

The effective date for provisions relating to distribution of support collected for families who formerly received cash assistance is October 1, 1995. For all others it is October 1, 1999.

Senate amendment

The effective date for distribution of support collected for families receiving cash assistance is October 1, 1999. The effective date for the clerical amendments and provisions relating to the distribution of child support collected for families who formerly received cash assistance or who never received cash assistance is October 1, 1995.

Conference agreement

The effective date for ending the $50 passthrough is October 1, 1996 or sooner at State option. The effective date for implementing the new distribution rules applying to post-welfare arrearages is October 1, 1997; for pre-welfare arrearages, the effective date is October 1, 2000.

4. PRIVACY SAFEGUARDS

Present law

Federal law limits the use or disclosure of information concerning recipients of Child Support Enforcement Services to purposes connected with administering specified Federal welfare programs.

House bill

States must implement safeguards against unauthorized use or disclosure of information related to proceedings or actions to establish paternity or to enforce child support. These safeguards must include prohibitions on release of information where there is a protective order or where the State has reason to believe a party is at risk of physical or emotional harm from the other party. This provision is effective October 1, 1997.

Senate amendment

Identical provision.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. RIGHTS TO NOTIFICATION AND HEARING

Present law

Most States have procedural due process requirements with respect to wage withholding. Federal law requires States to carry out withholding in full compliance with all procedural due process requirements of the State.

House bill

No provision.

Senate amendment

Parties to child support cases under Title IV–D must receive notice of proceedings in which child support is established or modified and must receive a copy of orders establishing or modifying child support within 14 days of issuance. Individuals served by the child support program must also have access to a fair hearing or other complaint procedures. These rules and procedures become effective on October 1, 1997.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

CHAPTER 2—LOCATE AND CASE TRACKING

6. STATE CASE REGISTRY

A. CONTENTS

Present law

No provision.

House bill

The automated State Case Registry must contain a record on each case in which services are being provided by the State agency, as well as each support order established or modified in the State on or after October 1, 1998.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. LINKING OF LOCAL REGISTRIES

Present law

No provision.

House bill

The Registry may be established by linking local case registries of support orders through an automated information network.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. USE OF STANDARDIZED DATA ELEMENTS

Present law

No provision.

House bill

The registry record will contain data elements on both parents, such as names, Social Security numbers and other uniform identification numbers, dates of birth, case identification numbers, and any other data the Secretary may require.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

D. PAYMENT RECORDS

Present law

Federal law, with respect to wage withholding, requires that wage withholding be administered by a public agency capable of documenting payments of support and tracking and monitoring such payments.

House bill

Each case record will contain the amount of support owed under the order and other amounts due or overdue, any amounts that have been collected and distributed, the birth date of any child for whom the order requires the provision of support, and the amount of any lien imposed by the State.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

E. UPDATING AND MONITORING

Present law

Federal law requires that child support orders be reviewed and adjusted, as appropriate, at least once every 3 years.

House bill

The State agency operating the registry will promptly establish and maintain and regularly update case records in the registry with respect to which services are being provided under the State plan. Updating will be based on administrative actions and administrative and judicial proceedings and orders relating to paternity and support, as well as information obtained from comparison with Federal, State, and local sources of information, information on support collections and distributions, and any other relevant information.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

F. INFORMATION COMPARISONS AND OTHER DISCLOSURES

Present law

No provision.

House bill

The State automated system will be used to extract data for purposes of sharing and matching with Federal and State data bases and locator services, including the Federal Case Registry of

Child Support Orders, the Federal Parent Locator Service, Temporary Assistance for Needy Families and Medicaid agencies, and intra- and interstate information comparisons.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

7. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS

A. STATE DISBURSEMENT UNIT

Present law

No provision. But States may provide that, at the request of either parent, child support payments be made through the child support enforcement agency or the agency that administers the State's income withholding system regardless of whether there is an arrearage. States must charge the parent who requests child support services a fee equal to the cost incurred by the State for these services, up to a maximum of $25 per year.

House bill

By October 1, 1998, State child support agencies are required to operate a centralized, automated unit for collection and disbursement of payments on child support orders enforced by the child support agency. The specifics of how States will establish and operate their State Disbursement Unit must be outlined in the State plan.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. OPERATION

Present law

No provision.

House bill

The State Disbursement Unit must be operated directly by the State agency, by two or more State agencies under a regional cooperative agreement, or by a contractor responsible directly to the State agency.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. LINKING OF LOCAL DISBURSEMENT UNITS

Present law

No provision.

House bill

The State Disbursement Unit may be established by linking local disbursement units through an automated information network. The Secretary must agree that the system will not cost more nor take more time to establish than a centralized system. In addition, employers shall be given one location per State to which income withholding is sent.

Senate amendment

Similar provision except that whereas the House requires only that the system not cost more or take more time to establish, the Senate adds the condition that the system also cannot take more time to operate.

Conference agreement

The House recedes to the Senate provision allowing States to establish their State Disbursement Unit by linking local disbursement units only if linking units does not cost more money nor take more time to establish and to operate.

D. REQUIRED PROCEDURES

Present law

No provision.

House bill

The Disbursement Unit will be used to collect and disburse support payments, to generate orders and notices of withholding to employers, to keep an accurate identification of payments, to promptly distribute money to custodial parents or other States, and to furnish parents with a record of the current status of support payments. The Unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

E. TIMING OF DISBURSEMENTS

Present law

No provision.

House bill

The Disbursement Unit must distribute all amounts payable within 2 business days after receiving money and identifying information from the employer or other source of periodic income, if sufficient information identifying the payee is provided.

Senate amendment

Similar to House provision, except permits the retention of arrearages in the case of appeals until they are resolved.

Conference agreement

The Conference agreement follows the House bill and Senate amendment except that the House recedes to the Senate requirement that States be allowed to retain arrearages in the case of appeals until they are resolved.

F. USE OF AUTOMATED SYSTEM

Present law

No provision.

House bill

States must use their automated system to facilitate collection and disbursement including at least:

(1) transmission of orders and notices to employers within 2 days after receipt of the withholding notice;

(2) monitoring to identify missed payments of support; and

(3) automatic use of enforcement procedures when payments are missed.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

G. EFFECTIVE DATE

Present law

No provision.

House bill

This section of the bill will go into effect on October 1, 1998.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

8. STATE DIRECTORY OF NEW HIRES

A. STATE PLAN REQUIREMENT

Present law

No provision.

House bill

State plans must include the provision that by October 1, 1997 States will operate a Directory of New Hires (as outlined below).

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. ESTABLISHMENT

Present law

No provision.

House bill

States are required to establish a State Directory of New Hires to which employers and labor organizations in the State must furnish a report for each newly hired employee, unless reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission as determined by the head of an agency.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with the clarification that States that already have new hire reporting laws may continue to follow the provisions of their own law until October 1, 1996, at which time States must conform to Federal law.

C. EMPLOYER INFORMATION

Present law

No provision.

House bill

Employers must furnish to the State Directory of New Hires the name, address, and Social Security number of every new employee and the name and identification number of the employer. Multistate employers may report to the State in which they have the most employees.

Senate amendment

Similar to House provision, but allows multistate employers to report to the State they designate. The employer must notify the DHHS Secretary as to the name of the designated State.

Conference agreement

The conference agreement follows the House bill and the Senate amendment except that the House recedes to the Senate provision allowing multistate employers to report to the State of their choice. Employers must notify the Secretary of the name of the designated State.

D. TIMING OF REPORT

Present law

No provision.

House bill

Employers must report new hire information within 15 days of the hire or on the date the employee first receives wages.

Senate amendment

Employers must report new hire information within 30 days of the hire or if the employer reports by magnetic or electronic means, the employer can report by the first business day of the week following the date on which the employee first receives wages.

Conference agreement

Conferees agree on two general rules for timing of new hire reports. First, except as noted below, employers must report new hire information within 20 days of the date of hire.

E. REPORTING FORMAT AND METHOD

Present law

No provision.

House bill

The report required in this section will be made on a W–4 form or the equivalent, and can be transmitted magnetically, electronically, or by first class mail.

Senate amendment

Similar to House provision, but only allows the report to be filed on a W–4 form, not the equivalent.

Conference agreement

The conferees agreed to follow both the House and Senate provisions except that the Senate would recede to the House provision allowing employers, at their option, to use an equivalent form. The decision of which reporting method to use is entirely up to employers.

F. CIVIL MONEY PENALTIES ON NONCOMPLYING EMPLOYERS

Present law

In general, no provision.

Section 1128 of the Social Security Act is an antifraud provision which excludes individuals and entities that have committed fraud from participation in Medicare and State health care programs. Section 1128A pertains to civil monetary penalties and describes the appropriate procedures and proceedings for such penalties.

House bill

An employer failing to make a timely report is subject to a $25 fine for each unreported employee. There is also a $500 penalty on employers for every employee for whom they do not transmit a W–4 form if, under the laws of the State, there is shown to be a conspiracy between the employer and the employee to prevent the proper information from being filed.

The House bill makes several but not all provisions of section 1128 applicable to employers that violate reporting requirements.

Senate amendment

States have the option of setting a civil money penalty which shall be not less than $25 or $500 if, under State law, the failure is the result of a conspiracy between the employer and employee. The Senate amendment does not make any provisions of section 1128 applicable to employers.

Conference agreement

The conference agreement follows both the House and Senate provisions except that the House recedes to the Senate provision of making the penalties a State option.

G. ENTRY OF NEW HIRE INFORMATION

Present law

No provision.

House bill

No provision.

Senate amendment

New hire information must be entered into the State data base within 5 business days of receipt from employer.

Conference agreement

The House recedes to the Senate requirement of requiring States to enter New Hire information in their data base within 5 business days.

H. INFORMATION COMPARISONS

Present law

No provision.

House bill

By October 1, 1997, each State Directory of New Hires must conduct automated matches of the Social Security numbers of reported employees against the Social Security numbers of records in the State Case Registry being enforced by the State agency and report the name, Social Security number, and employer identification number on matches to the State child support agency.

Senate amendment

Similar to House provision, except requires comparisons to begin by October 1, 1998 rather than 1997.

Conference agreement

Conferees agreed to follow the House and Senate provisions but to compromise on the date by which comparisons must begin by adopting a May 1, 1998 effective date.

I. TRANSMISSION OF INFORMATION

Present law

No provision.

House bill

Within two business days of the entry of data in the registry, the State must transmit a withholding order directing the employer to withhold wages in accord with the child support order. Within four days, the State Directory of New Hires must furnish employee information to the National Directory of New Hires for matching with the records of other State case registries. The State Directory of New Hires must also report quarterly to the National Directory of New Hires information on wages and unemployment compensation taken from the quarterly report to the Secretary of Labor now required by Title III of the Social Security Act.

Senate amendment

Similar to House provision, except requires State Directory to report to the National Directory within two, rather than four, days.

Conference agreement

The conference agreement is to follow the House and Senate provisions and to compromise on the reporting date by allowing States three days to report to the National Directory of New Hires.

J. OTHER USES OF NEW HIRE INFORMATION

Present law

No provision.

House bill

The State child support agency must use the new hire information for purposes of establishing paternity as well as establishing, modifying, and enforcing child support obligations. New hire information (pursuant to section 1137 of the Social Security Act) must also be disclosed to the State agency administering the Temporary

Assistance for Needy Families, Medicaid, Unemployment Compensation, Food Stamp, SSI, and territorial cash assistance programs for income eligibility verification, and to State agencies administering unemployment and workers' compensation programs to assist determinations of the allowability of claims.

Senate amendment

Similar to House provision, except requires State and local government agencies to be included in quarterly wage reporting unless the agency performs intelligence or counterintelligence functions and it is determined that wage reporting could endanger the safety of the employee or compromise the investigation or intelligence mission.

Conference agreement

The conference agreement follows the House and Senate provisions except that the House recedes to the Senate provision allowing State and local government agencies to exempt employees doing intelligence or counterintelligence work whose safety might be compromised by the reporting.

9. AMENDMENTS CONCERNING INCOME WITHHOLDING

Present law

Since November 1, 1990, all new or modified child support orders that were being enforced by the State's child support enforcement agency have been subject to immediate income withholding. If the noncustodial parent's wages are not subject to income withholding (pursuant to the November 1, 1990 provision), such parent's wages would become subject to withholding on the date when support payments are 30 days past due. Since January 1, 1994, the law has required States to use immediate income withholding for all new support orders, regardless of whether a parent has applied for child support enforcement services. There are two circumstances in which income withholding does not apply: 1) one of the parents demonstrates and the court or administrative agency finds that there is good cause not to do so, or 2) a written agreement is reached between both parents which provides for an alternative arrangement. States must implement procedures under which income withholding for child support can occur without the need for any amendment to the support order or for any further action by the court or administrative entity that issued the order. States are also required to implement income withholding in full compliance with all procedural due process requirements of the State, and States must send advance notice to each nonresident parent to whom income withholding applies (with an exception for some States that had income withholding before enactment of this provision that met State due process requirements). States must extend their income withholding systems to include out-of–State support orders.

House bill

States must have laws providing that all child support orders issued or modified before October 1, 1996, which are not otherwise subject to income withholding, will become subject to income withholding immediately if arrearages occur, without the need for judicial or administrative hearing. State law must also allow the child support agency to execute a withholding order through electronic means and without advance notice to the obligor. Employers must remit to the State disbursement unit income withheld within 2 working days after the date such amount would have been paid or credited to the employee.

Senate amendment

Similar to House provision, but requires all child support orders which are not part of the State IV–D program to be processed through the State disbursement unit. In addition, States must notify noncustodial parents that income withholding has commenced and inform them of procedures for contesting income withholding.

Conference agreement

The conference agreement follows the House and Senate provisions except that the House recedes to the Senate provision requiring all child support orders which are not part of the State IV–D program to be processed through the State disbursement unit. In addition, States must notify noncustodial parents that income withholding has commenced and inform them of procedures for contesting income withholding.

10. LOCATOR INFORMATION FROM INTERSTATE NETWORKS

Present law

No provision.

House bill

All State and the Federal Child Support Enforcement agencies must have access to the motor vehicle and law enforcement locator systems of all States.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

11. EXPANSION OF THE FEDERAL PARENT LOCATOR SERVICE

A. EXPANDED AUTHORITY TO LOCATE INDIVIDUALS AND ASSETS

Present law

The law requires that the Federal Parent Locator Service (FPLS) be used to obtain and transmit information about the location of any absent parent when that information is to be used for the purpose of enforcing child support.

House bill

The purposes of the Federal Parent Locator Service are expanded. For the purposes of establishing parentage, establishing support orders or modifying them, or enforcing support orders, the Federal Parent Locator Service will provide information to locate individuals who owe child support or against whom an obligation is sought or to whom such an obligation is owed. Information in the FPLS includes Social Security number, address, name and address of employer, and wages and employee benefits (including information about health care coverage).

Senate amendment

Similar to House provision, except clarifies current law by stating that information from the Federal Parent Locator Service can be used to enforce visitation orders. Senate also allows FPLS to contain and provide information on assets and debts.

Conference agreement

The conference agreement is similar to both the House bill and the Senate amendment. The agreement clarifies the statute so that nonresident parents are given access to information from the FPLS if these requests are made through a court or through the State child support agency.

B. REIMBURSEMENTS

Present law

Federal law requires that any department or agency of the United States must be reimbursed for costs incurred for providing requested information to the FPLS.

House bill

The Secretary is authorized to set reasonable rates for reimbursing Federal and State agencies for the costs of providing information to the FPLS and to set reimbursement rates that State and Federal agencies that use information from the FPLS must pay to the Secretary.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. NEW COMPONENTS OF FPLS

(1) FEDERAL CASE REGISTRY OF CHILD SUPPORT ORDERS

Present law

No provision.

House bill

The House bill establishes within the FPLS an automated registry known as the Federal Case Registry of Child Support Orders. The Federal Case Registry contains abstracts of child support orders and other information specified by the Secretary (such as names, Social Security numbers or other uniform identification numbers, State case identification numbers, wages or other income, and rights to health care coverage) to identify individuals who owe or are owed support (or for or against whom support is sought to be established), and the State which has the case. States must begin reporting this information in accord with regulations issued by the Secretary, by October 1, 1998.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

(2) NATIONAL DIRECTORY OF NEW HIRES

Present law

No provision.

House bill

The House bill establishes within the FPLS a National Directory of New Hires containing information supplied by State Directories of New Hires, beginning October 1, 1996. When fully implemented, the Federal Directory of New Hires will contain identifying information on virtually every person who is hired in the United States. In addition, the FPLS will contain quarterly data supplied by the State Directory of New Hires on wages and Unemployment Compensation paid. The Secretary of the Treasury must have access to information in the Federal Directory of New Hires for the purpose of administering section 32 of the Internal Revenue Code and the Earned Income Tax Credit.

Senate amendment

The Senate provision is similar to the House provision with two exceptions: 1) the Senate amendment includes the requirement that the information for the National Directory of New Hires must be entered within 2 days of receipt; and 2) the Senate amendment requires the DHHS Secretary to maintain within the National Directory of New Hires a list of multistate employers who choose a State to send their report to and the name of the State so designated.

Conference agreement

Conferees agree to follow both the House bill and Senate amendment except that the House recedes on the points of difference. Thus, the National Directory must enter new information within 2 days and the Secretary must maintain a list of the States to which multistate employers send their new hire information.

D. INFORMATION COMPARISONS AND OTHER DISCLOSURES

Present law

Upon request, the Secretary must provide to an "authorized person" (i.e., an employee or attorney of a child support agency, a court with jurisdiction over the parties involved, the custodial parent, legal guardian, or attorney of the child) the most recent address and place of employment of any absent parent if the information is contained in the records of the Department of Health and Human Services, or can be obtained from any other department or agency of the United States or of any State. The FPLS also can be used in connection with the enforcement or determination of child custody and in cases of parental kidnapping. Federal law requires the Secretary of Labor and the Secretary of Health and Human Services to enter into an agreement to give the FPLS prompt access to wage and unemployment compensation claims information useful in locating a noncustodial parent or his employer.

House bill

The Secretary must verify the accuracy of the name, Social Security number, birth date, and employer identification number of individuals in the Federal Parent Locator Service with the Social Security Administration. The Secretary is required to match data in the National Directory of New Hires against the child support order abstracts in the Federal Case Registry at least every 2 working days and to report information obtained from matches to the State child support agency responsible for the case within 2 days. The information is to be used for purposes of locating individuals to establish paternity, and to establish, modify, or enforce child support orders. The Secretary may also compare information across all components of the FPLS to the extent and with the frequency that the Secretary determines will be effective. The Secretary will share information from the FPLS with several potential users including State agencies administering the Temporary Assistance for Needy Families program, the Commissioner of Social Security (to determine the accuracy of Social Security and Supplemental Security Income), and researchers under some circumstances.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

E. FEES

Present law

"Authorized persons" who request information from FPLS must be charged a fee.

House bill

The Secretary must reimburse the Commissioner of Social Security for costs incurred in performing verification of Social Security information and to States for submitting information on New Hires. States or Federal agencies that use information from FPLS must pay fees established by the Secretary.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

F. RESTRICTION ON DISCLOSURE AND USE

Present law

Federal law stipulates that no information shall be disclosed if the disclosure would contravene the national policy or security interests of the United States or the confidentiality of Census data.

House bill

Information from the FPLS cannot be used for purposes other than those provided in this section, subject to section 6103 of the Internal Revenue Code.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

G. INFORMATION INTEGRITY AND SECURITY

Present law

No provision.

House bill

The Secretary must establish and use safeguards to ensure the accuracy and completeness of information from the FPLS and restrict access to confidential information in the FPLS to authorized persons and purposes.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

H. QUARTERLY WAGE REPORTING

Present law

Requires the Secretary of Labor to provide prompt access for the DHHS Secretary to wage and unemployment compensation claims information and data maintained by the Labor Department or State employment security agencies.

House bill

No provision.

Senate amendment

Each department in U.S. shall submit name, Social Security number and wages paid the employee, on a quarterly basis to the

FPLS. Quarterly wage reporting shall not be filed for a Federal or State employee performing intelligence or counter-intelligence functions, if it is determined that filing such a report could endanger the employee or compromise an ongoing investigation.

Conference agreement

The conference agreement follows the Senate amendment.

I. CONFORMING AMENDMENTS

Present law

No provision.

House bill

This section makes several conforming amendments to Titles III and IV of the Social Security Act and the Federal Unemployment Tax Act.

Senate amendment

Similar to House provision, except amends section 303(h) to require State unemployment insurance agencies to report quarterly wage information to the Secretary of HHS or suffer financial penalties, while the House bill amends section 303(a) and simply requires quarterly reports to the Secretary of HHS.

Conference agreement

Conferees agreed to follow both the House and Senate provisions but to follow the Senate amendment by requiring State unemployment insurance agencies to file quarterly wage reports with the Secretary or pay penalties.

J. AUTHORIZED PERSON FOR INFORMATION REGARDING VISITATION RIGHTS

Present law

FPLS can also be used to provide information to authorized individuals and agencies making or entering a child custody order (see Sec. 463 of Social Security Act).

House bill

No provision.

Senate amendment

Expands functions of FPLS by requiring that information be made available to non-custodial parents for purposes of seeking or enforcing child visitation orders.

Conference agreement

The House recedes to the Senate amendment on this provision but with the agreement that nonresident parents cannot obtain information directly from the FPLS but must present their request through the courts or through the State child support agency. In addition, the agreement requires State child support agencies to treat requests for information from nonresident parents on the same basis and with the same priority as requests from resident parents.

12. COLLECTION AND USE OF SOCIAL SECURITY NUMBERS FOR USE IN CHILD SUPPORT ENFORCEMENT

Present law

Federal law requires that in the administration of any law involving the issuance of a birth certificate, States must require each parent to furnish their Social Security number for the birth records. The State is required to make such numbers available to child support agencies in accordance with Federal or State law. States may not place Social Security numbers directly on birth certificates.

House bill

States must have laws requiring that Social Security numbers be placed on applications for professional licenses, commercial drivers licenses, and occupational licenses, marriage licenses, and in the records for divorce decrees, child support orders, and paternity determination or acknowledgment orders. Individuals who die will have their Social Security number placed in the records relating to the death and recorded on the death certificate. There are several conforming amendments.

Senate amendment

Similar to House provision, except gives States the option of not including Social Security numbers on applications for licenses and bars the placement of Social Security numbers on marriage licenses.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment except that the House recedes to the Senate requirements that States have the option of not including Social Security numbers on applications and that States be barred from placing Social Security numbers on marriage licenses.

CHAPTER 3—STREAMLINING AND UNIFORMITY OF PROCEDURES

13. ADOPTION OF UNIFORM STATE LAWS

Present law

States have several options available for pursuing interstate child support cases including direct income withholding, interstate income withholding, and long-arm statutes which require the use of the court system in the State of the custodial parent. In addition, States use the Uniform Reciprocal Enforcement of Support Act (URESA) and the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) to conduct interstate cases. Moreover, Federal law imposes a Federal criminal penalty for the willful failure to pay past-due child support to a child who resides in a State other than the State of the obligor. In 1992, the National Conference of Commissioners on State Uniform Laws approved a new model State law for handling interstate CSE cases. The new Uniform

Interstate Family Support Act (UIFSA) is designed to deal with desertion and nonsupport by instituting uniform laws in all 50 States that limit control of a child support case to a single State. This approach ensures that only one child support order from one court or child support agency will be in effect at any given time. It also helps to eliminate jurisdictional disputes between States that are impediments to locating parents and enforcing child support orders across State lines. As of March, 1995, 23 States had enacted UIFSA, 15 verbatim and 8 with minor changes.

House bill

By January 1, 1997, all States must have enacted the Uniform Interstate Family Support Act (UIFSA) and have the procedures required for its implementation in effect. States are required to apply UIFSA to any case involving an order established or modified in one State that is sought to be modified in another State. States must also have a new provision on long-arm statutes and petitioning for modifications of orders, and are required to recognize as valid any method of service of process used in another State that is valid in that State.

Senate amendment

Similar to House provision, except permits but does not require States to apply UIFSA to all interstate cases.

Conference agreement

The conference agreement is that States must adopt UIFSA by January 1, 1998. The House recedes to the Senate on when UIFSA is used.

14. IMPROVEMENTS TO FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS

Present law

Federal law requires States to treat past-due support obligations as final judgments that are entitled to full faith and credit in every State. This means that a person who has a support order in one State does not have to obtain a second order in another State to obtain support due should the debtor parent move from the issuing court's jurisdiction. P.L. 103–383 restricts a State court's ability to modify a support order issued by another State unless the child and the custodial parent have moved to the State where the modification is sought or have agreed to the modification.

House bill

The provision clarifies the definition of a child's home State, makes several revisions to ensure that full faith and credit laws can be applied consistently with UIFSA, and clarifies the rules regarding which child support orders States must honor when there is more than one order.

Senate amendment

Similar to House provision.

Conference agreement

The conference agreement follows both the House and Senate provisions but the House recedes on "more than 1 court".

15. ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES

Present law

No provision.

House bill

States are required to have laws that permit them to send orders to and receive orders from other States without registering the underlying order unless the enforcement action is contested by the obligor on the grounds of mistake of fact or invalid order. The transmission of the order itself serves as certification to the responding State of the arrears amount and of the fact that the initiating State met all procedural due process requirements. No court action is required or permitted by the responding State. In addition, each responding State must, without requiring the case to be transferred to their State, match the case against its data bases, take appropriate action if a match occurs, and send the collections, if any, to the initiating State. States must keep records of the number of requests they receive, the number of cases that result in a collection, and the amount collected. States must respond to interstate requests within 5 days.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

16. USE OF FORMS IN INTERSTATE ENFORCEMENT

Present law

No provision.

House bill

The Secretary must issue forms that States must use for income withholding, for imposing liens, and for issuing administrative subpoenas in interstate cases. The forms must be issued by June 30, 1996 and States must be using the forms by October 1, 1996.

Senate amendment

Requires the DHHS Secretary to establish an advisory committee which must include State child support directors, and not later than June 30, 1996, after consultation with the advisory committee to issue forms that States must use for income withholding, for imposing liens, and for issuing administrative subpoenas in interstate cases. The forms must be issued by June 30, 1996 and States must be using the forms by October 1, 1996.

Conference agreement

Conferees agree to follow both the House and Senate provisions with a compromise on requiring the Secretary to consult with States. Rather than forming an advisory committee, the conference agreement requires the Secretary to consult with States before issuing the interstate forms. It is the intention of conferees to facilitate timely issuance of the forms but also to mandate that the Secretary work closely with State child support directors in developing the forms.

17. STATE LAWS PROVIDING EXPEDITED PROCEDURES

A. ADMINISTRATIVE ACTION BY STATE AGENCY

Present law

States must have procedures under which expedited processes are in effect under the State judicial system or under State administrative processes for obtaining and enforcing support orders and for establishing paternity.

House Bill

States must adopt a series of procedures to expedite both the establishment of paternity and the establishment, enforcement, and modification of support. These procedures provide for: (1) ordering genetic testing in appropriate cases; (2) entering a default order upon a showing of service of process and any other showing required by State law to establish paternity if the putative father refuses to submit to genetic testing and to establish or modify a support order when a parent fails to appear for a hearing; (3) issuing subpoenas to obtain information necessary to establish, modify or enforce an order, with appropriate sanctions for failure to respond to the subpoena; (4) obtaining access to records including: records of other State and local government agencies, law enforcement records, and corrections records, including automated access to records maintained in automated data bases; (5) directing the parties to pay support to the appropriate government entity; (6) ordering income withholding; (7) securing assets to satisfy arrearages by intercepting or seizing periodic or lump sum payments from States or local agencies; these payments include Unemployment Compensation, workers' compensation, judgements, settlements, lottery winnings, assets held by financial institutions, and public and private retirement funds; and (8) increasing automatically the monthly support due to include amounts to offset arrears.

Senate amendment

Similar to House provision, except requires States to include the following additional procedures: (1) requiring all entities in the State (including for-profit, nonprofit, and governmental employers) to provide information on employment, compensation and benefits of any employee or contractor in response to a request from the State IV–D agency; (2) obtaining access to a variety of public and private records including: vital statistics, State and local tax records, real and personal property, occupational and professional licenses and records concerning ownership and control of corporations, partnerships and other business entities, employment security records, public assistance records, motor vehicle records, corrections records, customer records of public utilities and cable TV companies, and records of financial institutions; (3) imposing liens to force the sale of property and distribution of proceeds; (4) requiring financial institutions (subject to the limitation on liabilities arising from affording such access) to provide information held by them on individuals who owe or are owed child support (or against or with respect to whom a support obligation is sought) to State child support agencies; and (5) requiring that due process safeguards be followed.

The amendment does not include the House provision regarding default orders in paternity cases upon a showing of service of process.

Conference agreement

The House recedes to the Senate on the five additional expedited procedures and includes the House provision regarding default orders in paternity cases upon a showing of service of process.

B. SUBSTANTIVE AND PROCEDURAL RULES

Present law

Federal regulations provide a number of safeguards, such as requiring that the due process rights of the parties involved be protected.

House bill

States must follow a series of procedural rules that apply to all of the expedited procedures outlined in the preceding section:

(1) Locator Information and Notice—requires parties in paternity and child support actions to file and update information about identity, address, and employer with the tribunal and with the State Case Registry upon entry of the order. The tribunal can deem due process requirements for notice and service of process to be met in any subsequent action upon delivery of written notice to the most recent residential or employer address filed with the tribunal.

(2) Statewide Jurisdiction—grants the child support agency and any administrative or judicial tribunal with authority to hear child support and paternity cases, to exert Statewide jurisdiction over the parties, and to grant orders that have Statewide effect; also permits transfer of cases between administrative areas without additional filing or service of process.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment except House recede to Senate language by replacing the term "administrative areas" with the term "local jurisdictions" in the section on Statewide jurisdiction.

C. AUTOMATION OF STATE AGENCY FUNCTIONS

Present law

No provision.

House bill

The automated systems being developed by States are to be used, to the maximum extent possible, to implement the expedited procedures.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

CHAPTER 4—PATERNITY ESTABLISHMENT

18. STATE LAWS CONCERNING PATERNITY ESTABLISHMENT

A. ESTABLISHMENT PROCESS AVAILABLE FROM BIRTH UNTIL AGE 18

Present law

Federal law requires States to strengthen their paternity establishment laws by requiring that paternity may be established until the child reaches age 18. As of August 16, 1984, these procedures would apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because of statute of limitations of less than 18 years was then in effect in the State.

House bill

Same as current law.

Senate amendment

Similar to House provision, except requires that paternity may be established until age 21 rather than 18.

Conference agreement

The Senate recedes so that States are required to have laws that permit paternity establishment until at least age 18 (or a higher limit at State option).

B. PROCEDURES CONCERNING GENETIC TESTING

Present law

Federal law requires States to implement laws under which the child and all other parties must undergo genetic testing upon the request of a party in contested cases.

House bill

The child and all other parties must undergo genetic testing upon the request of a party, where the request is supported by a sworn statement establishing a reasonable possibility of parentage or nonparentage. When the tests are ordered by the State agency, States must pay for the costs, subject to recoupment at State option from the father if paternity is established.

Senate amendment

Similar provision. House mandates genetic tests in certain cases while Senate allows States with laws against genetic testing in some cases to follow State law.

Conference agreement

The conference agreement follows both House and Senate provisions but the House recedes on the provision allowing States to exempt certain cases from the requirement for mandatory genetic testing. No State exemption, however, can permit a putative father to avoid paternity establishment procedures.

C. VOLUNTARY PATERNITY ACKNOWLEDGMENT

Present law

Federal law requires States to implement procedures for a simple civil process for voluntary paternity acknowledgment, including hospital-based programs.

House bill

(1) Simple Civil Process. States must have procedures that create a simple civil process for voluntary acknowledging paternity under which benefits, rights and responsibilities of acknowledgement are explained to unwed parents;

(2) Hospital Program. States must have procedures that establish a paternity acknowledgement program through hospitals and birth record agencies (and other agencies as designated by the Secretary).

(3) Paternity Services. States must have procedures that require the agency responsible for maintaining birth records to offer voluntary paternity establishment services. The Secretary must issue regulations, including regulations on other State agencies that may offer voluntary paternity acknowledgement services and the conditions such agencies must meet.

(4) Affidavit. States must have procedures that require agencies to use a uniform affidavit developed by the Secretary that is entitled to full faith and credit in any other State.

Senate amendment

(1) Simple Civil Process. Similar to House provision; Senate does not include language requiring that the explanation of alternatives, legal consequences, and rights and responsibilities be "in a language that each can understand".

(2) Hospital Program. Similar to House provision, except States must also establish good cause exceptions for not trying to establish paternity.

(3) Paternity Services. Identical to House provision.

(4) Affidavit. Similar provision but Senate amendment allows States to develop their own voluntary paternity acknowledgement form as long as they follow all the basic elements of a form developed by the Secretary.

Conference agreement

(1) Simple Civil Process. The conference agreement follows the House and Senate provisions except the House agrees to drop its requirement that the explanation be ''in a language that each [parent] can understand''.

(2) Hospital Program. Conferees agree to follow the House and Senate provisions but with a modification of the Senate language on ''good cause'' exceptions so that such exceptions become a State option.

(3) Paternity Services. The conference agreement follows the House bill and the Senate amendment.

(4) Affidavit. The House recedes to allow States to develop their own voluntary acknowledgment form as long as the form contains all the basic elements of a form developed by the Secretary.

D. STATUS OF SIGNED PATERNITY ACKNOWLEDGMENT

Present law

Federal law requires States to implement procedures under which the voluntary acknowledgment of paternity creates a rebuttable presumption, or at State option, a conclusive presumption of paternity.

House bill

(1) Legal Finding. States must have procedures under which a signed acknowledgement of paternity is considered a legal finding of paternity unless rescinded within 60 days.

(2) Contest. States must have procedures under which a paternity acknowledgment can be challenged in court only on the basis of fraud, duress, or material mistake of fact.

(3) Rescission. States must have procedures under which minors who sign a voluntary paternity acknowledgement are allowed to rescind it until age 18 or the date of the first proceeding to establish a support order, visitation, or custody rights.

Senate amendment

(1) Legal Finding. Adds the requirement that the name of the father appear in the birth records only if there is a paternity acknowledgement signed by both parents or paternity has been established by court order.

(2) Contest. Identical to House provision.

(3) Rescission. No provision.

Conference agreement

(1) Legal Finding. The House recedes to the Senate requirement that the father's name appear in the birth records only if certain conditions are met;

(2) Contest. The conference agreement follows the House bill and the Senate amendment.

(3) Rescission. The House agrees to drop the rescission requirement, thereby leaving this decision up to States.

E. BAR ON ACKNOWLEDGMENT RATIFICATION PROCEEDINGS

Present law

Federal law requires States to implement procedures under which such voluntary acknowledgment is admissible as evidence of paternity and the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

House bill

No judicial or administrative proceedings are required or permitted to ratify a paternity acknowledgement which is not challenged by the parents.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

F. ADMISSIBILITY OF GENETIC TESTING RESULTS

Present law

Federal law requires States to implement procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence. If no objection is made, the test results must be admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

House bill

States must have procedures for admitting into evidence accredited genetic tests, unless any objection is made within a specified number of days, and if no objection is made, clarifying that test results are admissible without the need for foundation or other testimony.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

G. PRESUMPTION OF PATERNITY IN CERTAIN CASES

Present law

Federal law requires States to implement procedures which create a rebuttable or, at State option, conclusive presumption of paternity based on genetic testing results indicating a threshold probability that the alleged father is the father of the child.

House bill

States must have laws that create a rebuttable or, at State option, conclusive presumption of paternity when results from genetic testing indicate a threshold probability that the alleged father is the father of the child.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

H. DEFAULT ORDERS

Present law

Federal law requires States to implement procedures that require a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

House bill

A default order must be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by the State law.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

I. NO RIGHT TO JURY TRIAL

Present law

No provision.

House bill

State laws must state that parties in a contested paternity action are not entitled to a jury trial.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

J. TEMPORARY SUPPORT BASED ON PROBABLE PATERNITY

Present law

No provision.

House bill

Upon motion of a party, State law must require issuance of a temporary support order pending an administrative or judicial determination of parentage if paternity is indicated by genetic testing or other clear and convincing evidence.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

K. PROOF OF CERTAIN SUPPORT AND PATERNITY ESTABLISHMENT COSTS

Present law

No provision.

House bill

Bills for pregnancy, childbirth, and genetic testing must be admissible in judicial proceedings without foundation testimony.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

L. STANDING OF PUTATIVE FATHERS

Present law

No provision.

House bill

Putative fathers must have a reasonable opportunity to initiate paternity action.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

M. FILING OF ACKNOWLEDGMENTS AND ADJUDICATIONS IN STATE REGISTRY

Present law

No provision.

House bill

Both voluntary acknowledgements and adjudications of paternity must be filed with the State registry of birth records for data matches with the central Case Registry of Child Support Orders established by the State.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

N. NATIONAL PATERNITY ACKNOWLEDGMENT AFFIDAVIT

Present law

No provision.

House bill

The Secretary is required to develop an affidavit to be used for voluntary acknowledgement of paternity which includes the Social Security number of each parent.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House and Senate provisions but includes a clarification that the Secretary, after consulting with the State child support directors, should list the common elements that States must include on their forms.

19. OUTREACH FOR VOLUNTARY PATERNITY ESTABLISHMENT

Present law

States are required to regularly and frequently publicize, through public service announcements, the availability of child support enforcement services.

House bill

States must publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

20. COOPERATION BY APPLICANTS FOR AND RECIPIENTS OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Present law

AFDC applicants and recipients are required to cooperate with the State in establishing the paternity of a child and in obtaining child support payments unless the applicant or recipient is found to have good cause for refusing to cooperate. Under the "good cause" regulations, the child support agency may determine that it is against the best interests of the child to seek to establish paternity in cases involving incest, rape, or pending procedures for adoption. Moreover, the agency may determine that it is against the best interest of the child to require the mother to cooperate if it is anticipated that such cooperation will result in the physical or emotional harm of the child, parent, or caretaker relative.

House bill

Individuals who apply for or receive public assistance under the Temporary Assistance for Needy Families program must cooperate with child support enforcement efforts (establishing paternity, establishing, modifying or enforcing a support order) by providing specific identifying information about the other parent, unless the applicant or recipient is found to have good cause for refusing to cooperate. "Good cause" is defined by States. States may also require the applicant and child to submit to genetic testing. (See also Prohibitions in Title I, Section 101 of the House bill.)

Senate amendment

The Senate provision is similar to the House provision except the Senate amendment places additional specific requirements on State procedures. These include requiring the custodial parent to appear at interviews, hearings, and legal proceedings; requiring the State child support agency to notify the custodial parent and the IV–A and Medicaid agencies of whether she is cooperating and if not what she must do to cooperate; and requiring that when determining the custodial parent's cooperation States take into account the best interests of the child. Also requires the individual and the child to submit to genetic tests pursuant to a judicial or administrative order. Responsibility for determining failure to cooperate is shifted from the agency that administers the Temporary Assistance program to the agency that administers the child support program.

Conference agreement

The House recedes to the Senate's additional requirements for cooperation by adults applying for or receiving IV–A benefits.

CHAPTER 5—PROGRAM ADMINISTRATION AND FUNDING

21. FEDERAL MATCHING PAYMENTS

Present law

The Federal Government currently reimburses each State at the rate of 66 percent for the cost of administering its child support enforcement program. The Federal Government also reimburses States 90 percent of the laboratory costs of establishing paternity, and through fiscal year 1995, 90 percent of the costs of developing comprehensive Statewide automated systems. (There is no maintenance of effort provision in current law.)

House bill

The Federal matching payment for child support activities is maintained at 66 percent. The bill also adds a maintenance of effort requirement that the non-Federal share of IV–D funding for fiscal year 1997 and succeeding years not be less than such funding for fiscal year 1996.

Senate amendment

No provision. Maintains present law with respect to the Federal match rate of 66 percent.

Conference agreement

The conference agreement follows the Senate amendment.

22. PERFORMANCE-BASED INCENTIVES AND PENALTIES

A. INCENTIVE ADJUSTMENTS TO FEDERAL MATCHING RATE

Present law

The Federal government reimburses approved administrative expenditures of States at a rate of 66%. In addition, the Federal government pays States an incentive amount ranging from 6 percent to 10 percent of both AFDC and non-AFDC collections.

House bill

Beginning in 1999, a new incentive system will reward good State performance by increasing the State's basic matching rate by up to 12 percentage points for outstanding performance in establishing paternity and by up to an additional 12 percentage points for overall performance (as measured by the percentage of cases that have support orders, the percentage of cases in which support is being paid, the ratio of child support collected to child support due, and cost-effectiveness). The Secretary will design the specific features of the system. In doing so, she will maintain overall Federal reimbursement of State programs through the combined matching rate and incentives at the level projected for the current combined matching and incentive payments to States. The effect of this provision is to change Federal financing so that relatively more Federal dollars will be awarded to States for good performance. The State must spend the money from incentive payments on their child support enforcement program.

Senate amendment

As under current law, the Senate amendment provides for an incentive payment to States, the funds for which come from the reimbursement of cash welfare payments to the Federal Government that is the Federal share of child support collections paid on behalf of families. Not later than 60 days after enactment, the DHHS Secretary is required to establish a committee, which must include State child support directors, which must develop for the Secretary's approval a formula for the distribution of incentive payments to the States. The State's incentive payment is based on its comparative performance as measured by five criteria and seven factors that are stipulated in the amendment.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. CONFORMING AMENDMENTS

Present law

No provision.

House bill

Two conforming amendments are made in Section 454 of the Social Security Act.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the two conforming amendments in the House bill.

C. CALCULATION OF IV–D PATERNITY ESTABLISHMENT PERCENTAGE

Present law

States are required to meet Federal standards for the establishment of paternity. The standard relates to the percentage obtained by dividing the number of children in the State who are born out of wedlock, are receiving AFDC or child support enforcement services, and for whom paternity has been established by the number of children who are born out of wedlock and are receiving AFDC or child support enforcement services. To meet Federal requirements, this percentage in a State must be at least 75 percent or meet the following standards of improvement from the preceding year: 1) if the State paternity establishment ratio is between 50 and 75 percent, the State ratio must increase by 3 or more percentage points from the ratio of the preceding year; 2) if the State ratio is between 45 and 50, the ratio must increase at least 4 percentage points; 3) if the State ratio is between 40 and 45 percent, it must increase at least 5 percentage points; and 4) if the State ratio is below 40 percent, it must increase at least 6 percentage points. If an audit finds that the State's child support enforcement program has not substantially complied with the requirements of its State plan, the State is subject to a penalty. In accord with this penalty, the Secretary must reduce a State's AFDC benefit payment by not less than 1 percent nor more than 2 percent for the first failure to comply; by not less than 2 percent nor more than 3 percent for the second consecutive failure to comply; and by not less than 3 percent nor more than 5 percent for third or subsequent consecutive failure to comply.

House bill

The IV–D paternity establishment percentage for a fiscal year is equal to: (1) the total number of children in the State who were born out-of-wedlock, who have not reached age 1 and for whom paternity is acknowledged or established during the fiscal year, divided by (2) the total number of children born out-of-wedlock in the State during the fiscal year. The requirements for meeting the standard are the same as current law except the 75 percent rule is increased to 90 percent. The noncompliance provisions of the child support program are modified so that the Secretary must take overall program performance into account and the minimum paternity establishment percentage is raised from 75 to 90.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

D. EFFECTIVE DATES

Present law

No provision.

House bill

The new incentive payments go into effect on October 1, 1997, but procedures for computing the State incentive payments are not actually based on the new system until fiscal year 1999; the changes in penalty procedure become effective upon enactment.

Senate amendment

Effective upon enactment, except present law applies for purposes of incentive payments for fiscal years before fiscal year 2000.

Conference agreement

Effective upon enactment.

23. FEDERAL AND STATE REVIEWS AND AUDITS

A. STATE AGENCY ACTIVITIES

Present law

States are required to maintain a full record of child support collections and disbursements and to maintain an adequate reporting system.

House bill

States are required to annually review and report to the Secretary, using data from their automatic data processing system, both information adequate to determine the State's compliance with Federal requirements for expedited procedures and timely case processing as well as the information necessary to calculate their levels of accomplishment and rates of improvement on the performance indicators in the bill.

Senate amendment

Similar to House provision, except does not include requirement that States submit process information on State compliance with Federal mandates on timely case processing.

Conference agreement

The conference agreement follows both the House and Senate provisions but the House recedes on its requirement that States submit information on timely case processing.

B. FEDERAL ACTIVITIES

Present law

The Secretary must collect and maintain, on a fiscal year basis, up-to-date State-by-State statistics on each of the services provided under the child support enforcement program. The Secretary is also required to evaluate the implementation of State child support enforcement programs and conduct audits of these programs as necessary, but not less often than once every 3 years (or annually if a State has been found to be out of compliance with program rules).

House bill

The Secretary is required to determine the amount (if any) of incentives or penalties. The Secretary must also review State reports on compliance with Federal requirements and provide States with recommendations for corrective action. Audits must be conducted at least once every 3 years, or more often in the case of States that fail to meet Federal requirements. The purpose of the audits is to assess the completeness, reliability, accuracy, and security of data reported for use in calculating the performance indicators and to assess the adequacy of financial management of the State program.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

C. EFFECTIVE DATE

Present law

No provision.

House bill

These provisions take effect beginning with the calendar quarter that begins 12 months after enactment.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

24. REQUIRED REPORTING PROCEDURES

Present law

The Secretary is required to assist States in establishing adequate reporting procedures and must maintain records of child support enforcement operations and of amounts collected and disbursed, including costs incurred in collecting support payments.

House bill

The Secretary is required to establish procedures and uniform definitions for State collection and reporting of information necessary to measure State compliance with expedited processes and timely case processing.

Senate amendment

Similar to House provision, except does not mention timely case processing.

Conference agreement

The conference agreement follows both the House and Senate provisions except, as in the State Agency Activities provision (see #23A above), the House recedes by dropping State reports on timely case processing.

25. AUTOMATED DATA PROCESSING REQUIREMENTS

A. IN GENERAL

Present law

Federal law (P.L. 104–35) requires that by October 1, 1997, States have an operational automated data processing and information retrieval system designed to control, account for, and monitor all factors in the support enforcement and paternity determination process, the collection and distribution of support payments, and the costs of all services rendered.

House bill

States are required to have a single Statewide automated data processing and information retrieval system which has the capacity to perform the necessary functions, as described in this section.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

B. PROGRAM MANAGEMENT

Present law

Federal law requires that the automated data processing system be capable of providing management information on all IV–D cases from initial referral or application through collection and enforcement.

House bill

The State data system must be used to perform functions the Secretary specifies, including controlling and accounting for the use of Federal, State, and local funds and maintaining the data necessary to meet Federal reporting requirements in carrying out the program.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

C. CALCULATION OF PERFORMANCE INDICATORS

Present law

No provision.

House bill

The automated system must maintain the requisite data for Federal reporting, calculate the State's performance for purposes of the incentive and penalty provisions, and have in place systems controls to ensure the completeness, reliability, and accuracy of the data.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

D. INFORMATION INTEGRITY AND SECURITY

Present law

Federal law requires that the automated data processing system be capable of providing security against unauthorized access to, or use of, the data in such system.

House bill

The State agency must have safeguards to protect the integrity, accuracy, and completeness of, and access to, data in the automated systems (including restricting access to passwords, monitoring of access to and use of the system, training, and imposing penalties).

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

E. REGULATIONS

Present law

No provision.

House bill

The Secretary shall prescribe final regulations for implementation of this section no later than 2 years after the date of the enactment of this Act.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment.

F. IMPLEMENTATION TIMETABLE

Present law

No provision.

House bill

The statutory provisions for State implementation of Federal automatic data processing requirements are revised to provide that, first, all requirements enacted on or before the date of enactment of the Family Support Act of 1988 are to be met by October 1, 1995. The requirements enacted on or before the date of enactment of this bill must be met by October 1, 1999. The October 1, 1999 deadline will be extended by one day for each day by which the Secretary fails to meet the 2-year deadline for regulations.

Senate amendment

Similar to House provision, except allows States to meet requirements of the Family Support Act by October 1, 1997 rather than 1995.

Conference agreement

The conference agreement follows both House and Senate provisions but the completion date for data requirements imposed on States by the Family Support Act follows the Senate provision of October 1, 1997.

G. SPECIAL FEDERAL MATCHING RATE FOR DEVELOPMENT COSTS OF AUTOMATED SYSTEMS

Present law

The Federal Government, through FY 1995, reimburses States at a 90 percent matching rate for the costs of developing comprehensive Statewide automated systems.

House bill

The Federal government will provide 90 percent matching funds for fiscal year 1996 that will be applied to all State activities related to developing a comprehensive Statewide automated system. For fiscal years 1997 through 2001, the matching rate for the provisions of this bill and other authorized provisions will be the higher of 80 percent or the matching rate generally applicable to the State IV–D program, including incentive payments (which could be as high as 90 percent).

Senate amendment

Similar provision except Senate amendment continues the 90 percent matching rate for 1996 and 1997 in the case of provisions outlined in advanced planning documents submitted before May 1, 1995.

Conference agreement

The conference agreement follows the House bill and Senate amendment but the House recedes on the provision to continue 90 percent reimbursement of data processing activities that were included in any advanced planning document submitted by States and approved by the Secretary before May 1, 1995. The 90 percent funding, which continues through October 1, 1997, includes approved expenditures by States that were made between October 1, 1995 and the date of passage of this legislation.

H. TEMPORARY LIMITATION ON PAYMENTS UNDER SPECIAL FEDERAL MATCHING RATE

Present law

No provision.

House bill

The Secretary must create procedures to cap these payments at $260,000,000 over 5 years (fiscal year 1996–2000) to be distributed among States by a formula set in regulations which takes into account the relative size of State caseloads and the level of automation needed to meet applicable automatic data processing requirements.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and Senate amendment, except the limitation on payments is increased from $260,000,000 to $400,000,000.

26. TECHNICAL ASSISTANCE

Present law

Annual appropriations are made to cover the expenses of the Administration for Children and Families, which includes the Federal Office of Child Support Enforcement (OCSE). Among OCSE's administrative expenses are the costs of providing technical assistance to the States.

House bill

The Secretary can use 1 percent of the Federal share of child support collections on behalf of families in the Temporary Assistance for Needy Families program the preceding year to provide technical assistance to the States. Technical assistance can include training of State and Federal staff, research and demonstration programs, and special projects of regional or national significance. The Secretary must use up to 2 percent of the Federal share of collections for operation of the Federal Parent Locator Service to the extent that costs of the Parent Locator Service are not recovered by user fees.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

27. REPORTS AND DATA COLLECTION BY THE SECRETARY

Present law

The Secretary is required to submit to Congress, not later than 3 months after the end of the fiscal year, a complete report on all child support enforcement activities.

House bill

In addition to current reporting requirements, the Secretary is required to report the following data to Congress in her annual report each fiscal year:

(1) the total amount of child support payments collected;

(2) the cost to the State and Federal governments of furnishing child support services;

(3) the number of cases involving families that became ineligible for aid under part A with respect to whom a child support payment was received:

(4) the total amount of current support collected and distributed;

(5) the total amount of past due support collected and distributed as arrearages; and

(6) the total amount of support due and unpaid for all fiscal years.

These requirements apply to fiscal year 1996 and succeeding fiscal years.

Senate amendment

Similar to House provision, except requires the Secretary to include information on the degree to which States met Federal statutory time limits in responding to interstate requests and in distributing child support collections.

Conference agreement

Conferees agree to follow the provisions in both bills except that the House recedes on the additional requirements the Senate included in the Secretary's report to Congress.

CHAPTER 6—ESTABLISHMENT AND MODIFICATION OF SUPPORT ORDERS

28. NATIONAL CHILD SUPPORT GUIDELINES COMMISSION

Present law

No provision.

House bill

No provision.

Senate amendment

Establishes a National Child Support Guidelines Commission that is responsible for deciding whether it is appropriate to develop national child support guidelines for consideration by the Congress or for adoption by individual States and the benefits and deficiencies of such models. Several matters the Commission must consider, such as the feasibility of adapting uniform terms in all child support orders, are outlined. The Commission is to be comprised of 12 individuals, 2 each appointed by the Chairman of Finance and Ways and Means, 1 each by the ranking member of Finance and Ways and Means, and 6 by the Secretary. The Commission report must be issued within 2 years.

Conference agreement

The Senate recedes to the House provision of no National Guidelines Commission.

29. SIMPLIFIED PROCESS FOR REVIEW AND ADJUSTMENT OF CHILD SUPPORT ORDERS

Present law

A child support order legally obligates noncustodial parents to provide financial support for their child and stipulates the amount of the obligation and how it is to be paid. In 1984, P.L. 98–378 required States to establish guidelines for establishing child support orders. In 1988, P.L. 100–485 made the guidelines binding on judges and other officials who had authority to establish support orders. P.L. 100–485 also required States to review and adjust individual child support orders once every 3 years under some circumstances. States are required to notify both resident and non-resident parents of their right to a review.

House bill

States must review and, as appropriate, adjust the support order every 3 years. States may adjust child support orders by either applying the State guidelines and updating the reward amount or by applying a cost of living increase to the order. Both parties must be given 30 days after notice of adjustment to contest the results. States may use automated methods to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders based on the threshold established by the State. States must also review and, upon a showing of a change in circumstances, adjust orders pursuant to the child support guidelines upon request of a party. States are required to give parties one notice of their right to request review and adjustment, which may be included in the order establishing the support amount.

Senate amendment

Similar to House provision, except adds that review and adjustment must be done "upon the request of either parent or the State." If neither parent requests a review, States have the option of avoiding the 3-year review requirement.

Conference agreement

Conferees agree to follow the House and Senate provisions with one exception. The House recedes to the Senate provision that States are not required to conduct reviews unless requested by either parent but with the additional requirement that States inform mothers at least once every 3 years in writing of their right to a review.

30. FURNISHING CONSUMER REPORTS FOR CERTAIN PURPOSES RELATING TO CHILD SUPPORT

Present law

P.L. 102–537 amends the Fair Credit Act to require consumer reporting agencies to include in any consumer report information on child support delinquencies provided by or verified by a child support enforcement agency, which antedates the report by 7 years.

House bill

This section amends the Fair Credit Reporting Act. In response to a request by the head of a State or local child support agency (or a State or local government official authorized by the head of such an agency), consumer credit agencies must release information if the person making the request: certifies that the consumer report is needed to establish an individual's capacity to make child support payments or determine the level of payments; gives the consumer credit agency 10 days notice that the report is being requested; and provides assurances that the consumer report will be kept confidential, will be used solely for child support purposes, and will not be used in connection with any other civil, administrative, or criminal proceeding or for any other purpose. Consumer reporting agencies must also give reports to a child support agency for use to set an initial or modified award.

Senate amendment

Similar to House provision, except requires that the consumer must have been shown to be the father (i.e., paternity must be established).

Conference agreement

The conference agreement follows both the House and Senate provisions except that the House receded to the Senate requirement that the consumer must have been shown to be the father.

31. NONLIABILITY FOR DEPOSITORY INSTITUTIONS PROVIDING FINANCIAL RECORDS

Present law

No provision.

House bill

No provision.

Senate amendment

Depository institutions are not liable for information provided to child support agencies. Child support agencies can disclose information obtained from depository institutions only for child support purposes. Individuals who knowingly disclose information from financial records can have civil actions brought against them in Federal district court; the maximum penalty is $1,000 for each disclosure or actual damages plus, in the case of "willful disclosure" resulting from "gross negligence," punitive damages, plus the costs of the action.

Conference agreement

The House recedes to the Senate requirement that Sates have laws protecting depository institutions when information is provided to child support agencies.

CHAPTER 7—ENFORCEMENT OF SUPPORT ORDERS

32. FEDERAL INCOME TAX REFUND OFFSET

A. CHANGED ORDER OF REFUND DISTRIBUTION UNDER INTERNAL REVENUE CODE

Present law

Since 1981 in AFDC cases, and 1984 in non–AFDC cases, Federal law has required States to implement procedures under which child support agencies can collect child support arrearages through the interception of Federal income tax refunds.

Child support arrearages obtained through Federal income tax refunds are distributed to the State and are retained by the State for arrearages owed to it under the AFDC assignment. States must reimburse the Federal government for their share of these arrearage payments. If no arrearages are owed the State, the money is used to pay arrearages to the family.

House bill

The Internal Revenue Code is amended so that offsets of child support arrears owed to individuals take priority over most debts owed Federal agencies. Proceeds from tax intercepts will be distributed as follows:

(1) for Federal education debts and debts to the Department of Health and Human Services;

(2) for child support owed to individuals;

(3) for child support arrearages owed to State governments; and

(4) for other Federal debts.

The provision also amends the Internal Revenue Code so that the order of priority for distribution of tax offsets follows the distribution rules for child support payments specified in subtitle A of this bill.

Senate amendment

No provision.

Conference agreement

The House recedes to the Senate so that the order of payments from tax intercepts remains unchanged. This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. ELIMINATION OF DISPARITIES IN TREATMENT OF ASSIGNED AND NON-ASSIGNED ARREARAGES

Present law

Federal rules set different criteria for AFDC and non–AFDC cases. For example, in AFDC cases arrearages may be collected through the income tax offset program regardless of the child's age. In non–AFDC cases, the tax offset program can be used only if the postminor child is disabled (pursuant to the meaning of disability under titles II or XVI of the SSA). Moreover, the arrearage in AFDC cases must be only $150 or more, whereas the arrearage in non–AFDC cases must be at least $500.

House bill

The bill eliminates disparate treatment of families not receiving public assistance by repealing provisions applicable only to support arrears not assigned to the State. The Secretary of the Treasury is given access to information in the National Directory of New Hires for tax purposes.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

33. INTERNAL REVENUE SERVICE COLLECTION OF ARREARAGES

Present law

If the amount of overdue child support is at least $750, the Internal Revenue Service can enforce the child support obligation through its regular collection process, which may include seizure of property, freezing accounts, or use of other procedures if the child support enforcement agencies request assistance according to prescribed rules (e.g., certifying that the delinquency is at least $750, etc.)

House bill

No provision.

Senate amendment

Amends the Internal Revenue Code so that no additional fees can be assessed for adjustment to previously certified amounts for the same obligor, effective October 1, 1997.

Conference agreement

The House recedes to the Senate requirement that IRS cannot charge additional fees in the case of a previously certified amount for the same obligor.

34. AUTHORITY TO COLLECT SUPPORT FROM FEDERAL EMPLOYEES

A. CONSOLIDATION AND STREAMLINING OF AUTHORITIES

Present law

Federal law allows the wages of Federal employees to be garnished to enforce legal obligations for child support or alimony. Federal law provides that moneys payable by the United States to any individual are subject to being garnished in order to meet an individual's legal obligation to provide child support or make alimony payments. An executive order issued 2/27/95 establishes the Federal government as a model employer in promoting and facilitating the establishment and enforcement of child support.

By Executive Order on 2/27/95, all Federal agencies, including the Uniformed Services, are required to cooperate fully in efforts to establish paternity and child support and to enforce the collection of child and medical support. All Federal agencies are to review their wage withholding procedures to ensure that they are in full compliance.

Beginning no later than July 1, 1995, the Director of the Office of Personal Management must publish annually in the Federal Register the list of agents (and their addresses) designated to receive service of withholding notices for Federal employees.

Federal law states that neither the United States nor any disbursing officer or government entity shall be liable with respect to any payment made from moneys due or payable from the United States pursuant to the legal process.

Federal law provides that money that may be garnished includes compensation for personal services, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, incentive payments, and periodic payments.

Includes definitions of "United States", "child support", "alimony", "private person", and "legal process".

House bill

Federal Employees are subject to wage withholding and other actions taken against them by State Child Support Enforcement Agencies.

Federal agencies are responsible for wage withholding and other child support actions taken by the State as if they were a private employer.

The head of each Federal agency must designate an agent and place the agent's name, title, address, and telephone number in the Federal Register annually. The agent must, upon receipt of process, send written notice to the individual involved as soon as possible, but no later than 15 days, and to comply with any notice of wage withholding or respond to other process within 30 days.

Amends existing law governing allocation of moneys owed by a Federal employee to give priority to child support, to require allocation of available funds, up to the amount owed, among child support claimants, and to allocate remaining funds to other claimants on a first-come, first-served basis.

A government entity served with notice of process for enforcement of child support is not required to change its normal pay and disbursement cycle to comply with the legal process.

Similar to current law, the U.S., the government of the District of Columbia, and disbursing officers are not liable for child support payments made in accord with this section; nor is any Federal employee subject to disciplinary action or civil or criminal liability for disclosing information while carrying out the provisions of this section.

The President has the authority to promulgate regulations to implement this section as it applies to Federal employees of the Administrative branch of government; the President Pro Tempore of the Senate and Speaker of the House can issue regulations governing their employees; and the Chief Justice can issue regulations applicable to the Judicial branch.

This section broadens the definition of income to include funds such as insurance benefits, retirement and pension pay, survivor's benefits, compensation for death and black lung disease, veteran's benefits, and workers' compensation; but to exclude from income funds paid to defray expenses incurred in carrying out job duties, owed to the U.S., used to pay Federal employment taxes and fines and forfeitures ordered by court martial, withheld for tax purposes, used for health insurance or life insurance premiums, normal retirement contributions, or life insurance premiums.

This section includes definitions of "United States", "child support", "alimony", "private person", and "legal process".

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. CONFORMING AMENDMENTS

Present law

No provision.

House bill

This section includes conforming amendments to Title IV of the Social Security Act and Title 5 of the United States Code.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. MILITARY RETIRED AND RETAINER PAY

Present law

No provision.

House bill

This section expands the definition of court to include an administrative or judicial tribunal which includes the child support enforcement agency.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

D. EFFECTIVE DATE

Present law

No provision.

House bill

This section goes into effect 6 months after the date of enactment.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

35. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OF MEMBERS OF THE ARMED FORCES

A. AVAILABILITY OF LOCATOR INFORMATION

Present law

The Executive Order issued 2/27/95 requires a study which would include recommendations related to how to improve service of process for civilian employees and members of the Uniformed Services stationed outside of the United States.

House bill

The Secretary of Defense must establish a central personnel locator service that contains residential or, in specified instances, duty addresses of every member of the Armed Services (including retirees, the National Guard, and the Reserves). The locator service must be updated within 30 days of the time an individual establishes a new address. Information from the locator service must be made available to the Federal Parent Locator Service.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS

Present law

No provision.

House bill

The Secretary of Defense must issue regulations to facilitate granting of leave for members of the Armed Services to attend hearings to establish paternity or to establish child support orders.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. PAYMENT OF MILITARY RETIRED PAY IN COMPLIANCE WITH CHILD SUPPORT ORDERS

Present law

Federal law requires allotments from the pay and allowances of any member of the uniformed service when the member fails to pay child (or child and spousal) support payments.

House bill

The Secretary of each branch of the Armed Forces (including retirees, the Coast Guard, the National Guard, and the Reserves) is required to make child support payments directly to any State to which a custodial parent has assigned support rights as a condition of receiving public assistance. The Secretary of Defense must also ensure that payments to satisfy current support or child support arrears are made from disposable retirement pay. Payroll deductions must begin within 30 days or the first pay period after 30 days of receiving a wage withholding order.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

36. VOIDING OF FRAUDULENT TRANSFERS

Present law

No provision.

House bill

States must have in effect the Uniform Fraudulent Conveyance Act of 1981, the Uniform Fraudulent Transfer Act of 1984, or an equivalent law providing for voiding transfers of income or property in order to avoid payment of child support.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

37. SENSE OF THE CONGRESS THAT STATES SHOULD SUSPEND DRIVERS', BUSINESS, AND OCCUPATIONAL LICENSES OF PERSONS OWING PAST-DUE CHILD SUPPORT

Present law

No provision.

House bill

It is the sense of Congress that each State should suspend any driver's license, business license, or occupational license issued to any person who owes past-due child support.

Senate amendment

No provision.

Conference agreement

House recedes (no provision).

38. WORK REQUIREMENT FOR PERSONS OWING PAST–DUE CHILD SUPPORT

Present law

P.L. 100–485 required the Secretary to grant waivers to up to 5 States allowing them to provide JOBS services on a voluntary or mandatory basis to noncustodial parents who are unemployed and unable to meet their child support obligations. (In their report the conferees noted that the demonstrations would not grant any new powers to the States to require participation by noncustodial parents. The demonstrations were to be evaluated.

House bill

States must have laws that direct courts to order individuals owing past-due child support for a child receiving assistance under the Temporary Family Assistance program either to pay the support due or to participate in work activities. "Past-due support" is defined.

Senate amendment

Similar to House provision, except refers to "support" rather than "past-due support."

Conference agreement

Conferees agree to follow the House and Senate provisions except that the Senate recedes to the House provision that work apply only to nonresident parents owing past-due support.

39. DEFINITION OF SUPPORT ORDER

Present law

No provision.

House bill

A support order is defined as an order issued by a court or an administrative process established under State law that requires support of a child or of a child and the parent with whom the child lives.

Senate amendment

A support order is defined as a judgement, decree, or order (whether temporary, final, or subject to modification) issued by a court or an administrative agency for the support (monetary support, health care, arrearages, or reimbursement) of a child (including a child who has reached the age of majority under State law) or of a child and the parent with whom the child lives.

Conference agreement

The House recedes to the Senate definition of a support order.

40. REPORTING ARREARAGE TO CREDIT BUREAUS

Present law

Federal law requires States to implement procedures which require them to periodically report to consumer reporting agencies the name of debtor parents owing at least 2 months of overdue child support and the amount of child support overdue. However, if the amount overdue is less than $1,000, information regarding it shall be made available only at the option of the State. Moreover, any information may only be made available after the noncustodial parent has been notified of the proposed action and has been given reasonable opportunity to contest the accuracy of the information. States are permitted to charge consumer reporting agencies that request child support arrearage information for a fee, not to exceed the actual cost.

House bill

No provision.

Senate amendment

States are required to have procedures to periodically report to consumer credit reporting agencies the name of any noncustodial parent who is delinquent in the payment of support and the amount of overdue support owed by the parent.

Conference agreement

The House recedes to the Senate requirement that States periodically report to consumer credit reporting agencies.

41. LIENS

Present law

Federal law requires States to implement procedures under which liens are imposed against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State.

House bill

States are required to have procedures to accord full faith and credit and to enforce in accordance with State law a lien from another State. The lien must be accompanied by a certification from the State issuing the lien of the amount of overdue support and a certification that due process requirements have been met. The second State is not required to register the underlying order, unless contested on the grounds of mistake of fact.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

42. STATE LAW AUTHORIZING SUSPENSION OF LICENSES

Present law

No provision.

House bill

States have the authority to withhold, suspend, or restrict the use of drivers' licenses, professional and occupational licenses, and recreational licenses of individuals owing past-due support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

43. DENIAL OF PASSPORTS FOR NONPAYMENT OF CHILD SUPPORT

Present law

No provision.

House bill

No provision.

Senate amendment

If an individual owes arrearages in excess of $5,000 of child support, the Secretary of HHS must request that the State Department deny, revoke, or limit the individual's passport. State child support agencies must have procedures for certifying arrearages in excess of $5,000 and for notifying individuals who are in arrears.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

44. INTERNATIONAL CHILD SUPPORT ENFORCEMENT

Present law

The United States has not signed any of the major treaties regarding international support enforcement. Pursuant to the Uniform Reciprocal Enforcement of Support Act (URESA), most States have reciprocal agreements with at least one foreign country regarding reciprocal enforcement of support orders. States do not have the power to enter into treaties.

House bill

No provision.

Senate amendment

The Secretary of State is authorized to negotiate reciprocal agreements with foreign nations on behalf of the States, territories, and possessions of the United States regarding the international enforcement of child support obligations.

Conference agreement

The conference agreement follows the Senate amendment with substantial modification. The Secretary of State, with concurrence of the Secretary of HHS, is authorized to declare reciprocity with foreign countries having requisite procedures for establishing and enforcing support orders. The Secretary may revoke reciprocity if she determines that the enforcement procedures do not continue to meet the requisite criteria.

The requirements for reciprocity include procedures in the foreign country for U.S. residents—available at no cost—to establish parentage, to establish and enforce support orders for children and custodial parents, and to distribute payments.

The Secretary of HHS is required to facilitate enforcement services in international cases involving residents of the U.S. and of foreign reciprocating countries, including developing uniform forms and procedures, and providing information from the FPLS on the State of residence of the obligor.

Where there is no Federal reciprocity agreement, States are permitted to enter into reciprocal agreements with foreign countries.

The State plan must provide that request for services in international cases be treated the same as interstate cases, except that no application will be required and no costs will be assessed against the foreign country or the obligee (costs may be assessed at State option against the obligor).

45. DENIAL OF MEANS-TESTED FEDERAL BENEFITS TO NONCUSTODIAL PARENTS WHO ARE DELINQUENT IN PAYING CHILD SUPPORT

Present law

No provision.

House bill

No provision.

Senate amendment

Noncustodial parents who are more than 2 months delinquent in paying child support are not eligible to receive means-tested Federal benefits.

Conference agreement

Senate recede (no provision).

46. CHILD SUPPORT ENFORCEMENT FOR INDIAN TRIBES

Present law

There are about 340 Federally recognized Indian tribes in the 48 contiguous States. Among these tribes there are approximately 130 tribal courts and 17 Courts of Indian Offenses. Most tribal codes authorize their courts to hear parentage and child support matters that involve at least one member of the tribe or person living on the reservation. This jurisdiction may be exclusive or concurrent with State court jurisdiction, depending on specified circumstances.

House bill

No provision.

Senate amendment

Requires States to make reasonable efforts to enter into cooperative agreements with an Indian tribe or organization if the tribe or organization has an established tribal court system to establish paternity, establish and enforce support orders, and enter support orders in accordance with guidelines established by the tribe or organization. Such agreements shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all funds collected by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute the funds according to the agreement. The DHHS Secretary in appropriate cases is authorized to send Federal funds directly to the tribe or organization.

Conference agreement

Senate recede (no provision).

47. FINANCIAL INSTITUTION DATA MATCHES

Present law

No provision.

House bill

No provision.

Senate amendment

States are required to implement procedures under which the State child support agency shall enter into agreements with financial institutions doing business within the State to develop and operate a data match system, using automated data exchanges to the maximum extent feasible, in which such financial institutions are required to provide for each calendar quarter the name, address, Social Security number, and other identifying information for each noncustodial parent identified by the State who has an account at the institution and, in response to a notice of lien or levy, to encumber or surrender assets held by the institution on behalf of the noncustodial parent who is subject to the child support lien. Includes definition of the term "financial institution."

Conference agreement

Conferees agree that the House recede to the Senate requirement that States perform data matches on information supplied by financial institutions in the case of parents who owe past-due child support and have liens against them.

48. ENFORCEMENT OF ORDERS AGAINST PATERNAL GRANDPARENTS IN CASES OF MINOR PARENTS

Present law

No provision. However, Wisconsin and Hawaii have State laws that make grandparents financially responsible for their minor children's dependents.

House bill

No provision.

Senate amendment

States would be required to implement procedures under which any child support order enforced by a child support enforcement agency would be enforceable against the paternal grandparents of a minor father if the child's minor mother were receiving benefits from the Temporary Assistance for Needy Families block grant program.

Conference agreement

The House recedes to the Senate requirement that paternal grandparents be held accountable for paying child support in the case of minor mother with children being supported by benefits from the Temporary Assistance for Needy Families block grant, or that the maternal grandparents be held accountable for paying child support in the case of a minor father raising children who receive benefits from the Temporary Assistance for Needy Families block grant.

CHAPTER 8—MEDICAL SUPPORT

49. TECHNICAL CORRECTION TO ERISA DEFINITION OF MEDICAL CHILD SUPPORT ORDER

Present law

P.L. 103–66 requires States to adopt laws to require health insurers and employers to enforce orders for medical and child support and forbids health insurers from denying coverage to children who are not living with the covered individual or who were born outside of marriage. Under P.L. 103–66, group health plans are required to honor "qualified medical child support orders."

House bill

This provision expands the definition of medical child support order in ERISA to clarify that any judgement, decree, or order that is issued by a court of competent jurisdiction or by an administrative adjudication has the force and effect of law.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

50. ENFORCEMENT OF ORDERS FOR HEALTH CARE COVERAGE

Present law

Federal law requires the Secretary to require IV–D agencies to petition for the inclusion of medical support as part of child support whenever health care coverage is available to the noncustodial parent at reasonable cost.

House bill

No provision.

Senate amendment

All orders enforced under this part must include a provision for health care coverage. If the noncustodial parent changes jobs and the new employer provides health coverage, the State must send notice of coverage, which shall operate to enroll the child in the health plan, to the new employer.

Conference agreement

The House recedes to the Senate provision on medical care coverage provided to children by nonresident parents changing jobs.

CHAPTER 9—ENHANCING RESPONSIBILITY AND OPPORTUNITY FOR NONRESIDENTIAL PARENTS

51. GRANTS TO STATES FOR ACCESS AND VISITATION PROGRAMS

A. IN GENERAL

Present law

In 1988, Congress authorized the Secretary to fund for fiscal year 1990 and fiscal year 1991 demonstration projects by States to help divorcing or never-married parents cooperate with each other, especially in arranging for visits between the child and the nonresident parent.

House bill

The bill authorizes grants to States for access and visitation programs including mediation, counseling, education, development of parenting plans, and visitation enforcement. Visitation enforcement can include monitoring, supervision, neutral drop-off and pick-up, and development of guidelines for visitation and alternative custody agreements. States are required to monitor and evaluate their programs and are given the authority to subcontract the program to courts, local public agencies, or private non-profit agencies. Programs operating under the grant do not have to be Statewide. Funding is authorized as capped spending under section IV–D of the Social Security Act. Projects are required to supplement rather than supplant State funds.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. AMOUNT OF GRANT

Present law

No provision.

House bill

The amount of the grant to a State is equal to either 90 percent of the State expenditures during the year for access and visitation programs or the allotment for the State for the fiscal year.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. ALLOTMENT TO STATES

Present law

No provision.

House bill

The allotment to the State bears the same ratio to the amount appropriated for the fiscal year as the number of children living in the State with one biological parent divided by the national number of children living with one biological parent. The Administration for Children and Families must adjust allotments to ensure that no State is allotted less than $50,000 for fiscal years 1996 or 1997 or less than $100,000 for any year after 1997.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

D. STATE ADMINISTRATION

Present law

No provision.

House bill

States may use the money to create their own programs or to fund grant programs with courts, local public agencies, or non-profit organizations. The programs do not need to be Statewide. States must monitor, evaluate, and report on their programs in accord with the regulations issued by the Secretary.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

CHAPTER 10—EFFECT OF ENACTMENT

52. EFFECTIVE DATES

Present law

No provision.

House bill

Except as noted in the text of the bill for specific provisions, the general effective date for provisions in the bill is October 1, 1996. However, given that many of the changes required by this bill must be approved by State Legislatures, the bill contains a grace period tied to the meeting schedule of State Legislatures. In any given State, the bill becomes effective either on October 1, 1996 or on the first day of the first calendar quarter after the close of the first regular session of the State Legislature that begins after the date of enactment of the bill. In the case of States that require a constitutional amendment to comply with the requirements of the bill, the grace period is extended either 1 year after the effective date of the necessary State constitutional amendment or 5 years after the date of enactment of the bill.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SUBTITLE D—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

1. STATEMENTS OF NATIONAL POLICY CONCERNING WELFARE AND IMMIGRATION

Present law

No provision.

House bill

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

(i) Self-sufficiency has been a basic principle of U.S. immigration law since this country's earliest immigration statutes;

(ii) It continues to be the immigration policy of the U.S. that aliens within the nation's borders depend not on public resources, but rely on their own capabilities and the resources of their families and sponsors and that the availability of public benefits not constitute an incentive for immigration;

(iii) Aliens have been applying for and receiving public benefits at increasing rates;

(iv) Current eligibility rules and unenforceable financial support agreements have proved incapable of assuring that individual aliens not burden the public benefits system;

(v) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements to assure that aliens become self-reliant; and

(vi) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

Senate amendment

No provision.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

CHAPTER 1—ELIGIBILITY FOR FEDERAL BENEFITS PROGRAMS

2. INELIGIBILITY OF ILLEGAL ALIENS FOR CERTAIN FEDERAL BENEFITS PROGRAMS

Present law

Current law limits alien eligibility for most major Federal assistance programs, including restrictions on, among other programs, Supplemental Security Income, Aid to Families with Dependent Children, housing assistance, and Food Stamps Programs. Current law is silent on alienage under, among other programs, school lunch and nutrition, Special Supplemental Food Program for Women, Infants, and Children (WIC), Head Start, migrant health centers, and the earned income tax credit.

Under the programs with restrictions, benefits are generally allowed for permanent resident aliens (also referred to as immigrants and green card holders), refugees, asylees, and parolees, but benefits (other than emergency Medicaid) are denied to nonimmigrants (or aliens lawfully admitted as, e.g., tourists, students, or temporary workers) and illegal aliens. Benefits are permitted under AFDC, SSI, unemployment compensation, and nonemergency Medicaid to other aliens permanently residing in the U.S. under color of law (PRUCOL).

House bill

Any alien who is not lawfully present in the U.S. shall not be eligible for any Federal means-tested public benefits program, with the exception of non-cash, in-kind emergency assistance, including emergency medical services. Housing-related assistance, which allows limited assistance for households containing both eligible and ineligible individuals, remains prohibited as under current law.

The Attorney General is to decide which aliens are lawfully present for purposes of benefit eligibility. In doing so, the Attorney General is not required to consider an alien to be lawfully present solely because the alien is considered to be permanently residing under color of law (PRUCOL) under current standards.

Senate amendment

Any individual who is not lawfully present in the U.S. is ineligible for any Federal benefit other than: emergency medical services under Medicaid; short-term emergency disaster relief; assistance under the National School Lunch Act or the Child Nutrition Act of 1966; and public health assistance for immunizations and, if found necessary by HHS, testing for and treatment of communicable diseases. Similarly, States which administer a Federally-funded benefit program (or provide benefits pursuant to such a program) are not required to assist aliens who are not lawfully present.

An individual is lawfully present for purposes of qualifying for benefits if the individual is a citizen, non-citizen national (i.e. American Samoan), permanent resident alien, refugee, asylee (including an alien who has had his/her deportation stayed because it would return the alien to a country which would persecute him/her), or an alien who has been paroled into the U.S. by the Attorney General for at least 1 year.

Noncitizens are not lawfully present for the purposes of the SSI program merely because they are considered to be permanently residing under color of law (PRUCOL).

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, except that aliens who are not lawfully present in the U.S. and nonimmigrants and aliens paroled into the U.S. for a period of less than 1 year as described below are grouped together and defined as classes "not qualified" to receive most mandatory Federal public benefits. However, even these "non-qualified" aliens may continue to receive: short-term, in-kind, emergency disaster relief; emergency medical services under Medicaid; public health assistance for immunizations and testing and treatment to prevent the spread of communicable diseases; and programs specified by the Attorney General as necessary to protect life and safety, such as soup kitchens and crisis counseling. With regard to public housing assistance, non-qualified aliens receiving benefits on the date of enactment will continue to be treated as they are under current law.

The conference agreement follows the Senate amendment regarding the definition of Federal public benefits for this and subsequent sections, namely: any mandatory grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by directly appropriated funds of the United States; and any mandatory retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family by an agency of the U.S. or by directly appropriated funds of the U.S.

The allowance for treatment of communicable diseases is very narrow. The conferees intend that it only apply where absolutely necessary to prevent the spread of such diseases. This is only a stop-gap measure until the deportation of a person or persons unlawfully here. It is *not* intended to provide authority for continued treatment of such diseases for a long term.

The allowance for emergency medical services under Medicaid is very narrow. The conferees intend that it only apply to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein.

The intent of the conferees is that title I, part A of the Elementary and Secondary Education Act would not be affected by section 12401 because the benefit is not provided to an individual, household, or family eligibility unit.

The conferees believe that, as a matter of national immigration policy regarding immigration and welfare, self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

It continues to be the immigration policy of the United States that aliens within the nation's borders not depend on taxpayer-funded public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations. The availability of taxpayer-funded public benefits should not constitute an incentive for immigration to the United States.

Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates. Current eligibility rules for public benefits and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

The conferees further believe that it is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy. It is also a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits. Finally, with respect to the State authority to make determinations concerning alien eligibility for public benefits in this subtitle, a State that chooses to follow the Federal classifications in determining the eligibility of aliens for public benefits shall be considered to have chosen the least restrictive means available for achieving the compelling government interest of assuring that aliens be self-reliant in accordance with national immigration policy.

3. INELIGIBILITY OF NONIMMIGRANTS, ASYLEES, AND PAROLEES FOR CERTAIN FEDERAL BENEFITS PROGRAMS

A. IN GENERAL

Present law

The Immigration and Nationality Act lists 19 categories of nonimmigrant aliens, including tourists, business visitors, foreign students, exchange visitors, temporary workers, and diplomats. Aliens granted political asylum and aliens allowed into the U.S. under the Attorney General's discretionary parole power are not among the nonimmigrant categories. Nonimmigrants generally are denied benefits under public benefits programs that have alienage restrictions. By contrast, asylees and parolees are not disqualified.

House bill

Aliens who are lawfully in the U.S. as nonimmigrants are ineligible for means-tested Federal benefits, other than the programs excepted below. Nonimmigrants admitted as temporary agricultural workers are not to be treated as nonimmigrants for public benefits purposes, but rather are to be treated as immigrants. Other aliens who also are not to be treated as nonimmigrants include aliens granted asylum and aliens paroled into the U.S. for 1 year or longer. However, aliens paroled into the U.S. for a period briefer than 1 year are subject to the nonimmigrant restrictions.

Senate amendment

Nonimmigrant aliens are not considered lawfully present for Federal benefits purposes, and are thus ineligible for any Federal benefit other than the programs specifically excepted below.

Conference agreement

The conference agreement generally follows the Senate amendment, as described in section 2 above.

The conferees believe that, as a matter of national immigration policy regarding immigration and welfare, self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

It continues to be the immigration policy of the United States that aliens within the nation's borders not depend on mandatory taxpayer-funded public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations. The availability of taxpayer-funded public benefits should not constitute an incentive for immigration to the United States.

Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates. Current eligibility rules for public benefits and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

The conferees further believe that it is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy. It is also a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits. Finally, with respect to the State authority to make determinations concerning alien eligibility for public benefits in this subtitle, a State that chooses to follow the Federal classifications in determining the eligibility of aliens for public benefits shall be considered to have chosen the least restrictive means available for achieving the compelling government interest of assuring that aliens be self-reliant in accordance with national immigration policy.

B. EXCEPTED PROGRAMS

Present law

Of Federal programs with alien eligibility restrictions, nonimmigrants are eligible for emergency services under Medicaid. Temporary agricultural workers may receive legal services funded through the Legal Services Corporation with respect to their wages, housing, and other employment rights covered by their employment contract. Those nonimmigrants whose wages are not exempt from unemployment taxes (FUTA) may qualify for unemployment compensation under certain circumstances.

House bill

Exception to the bill's blanket denial of Federal means-tested assistance to nonimmigrants is made for Emergency Assistance, including non-cash emergency medical services. Housing-related assistance is not covered by the bill's general rule, but rather existing restrictions under housing programs are to continue to apply. These restrictions deny assisted housing to nonimmigrants except as they may incidentally benefit as members of mixed families. However, all aliens granted parole are eligible for housing assistance.

Senate amendment

Permits nonimmigrants (and all others who are not lawfully present) to receive: emergency medical services under Medicaid; short-term emergency disaster relief; school lunch and child nutrition assistance; and public health assistance for immunizations and, if found necessary by HHS, testing for and treatment of communicable diseases.

Conference agreement

The conference agreement generally follows the Senate amendment, as described in section 2 above.

The allowance for treatment of communicable diseases is very narrow. The conferees intend that it only apply where absolutely necessary to prevent the spread of such diseases. This is only a stop-gap measure until the deportation of a person or persons unlawfully here. It is *not* intended to provide authority for continued treatment of such diseases for a long term.

The allowance for emergency medical services under Medicaid is very narrow. The conferees intend that it only apply to medical care that is *strictly* of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein.

C. TREATMENT OF ALIENS PAROLED INTO THE U.S.

Present law

In some cases, aliens paroled into the U.S. are entitled to public benefits while they remain in parole status.

House bill

Aliens paroled into the U.S. for less than 1 year are treated as nonimmigrants for benefits purposes (i.e., general ineligibility) but aliens paroled into the U.S. for longer than 1 year are treated as immigrants (i.e. somewhat broader, but still limited, eligibility).

Senate amendment

Aliens who have been paroled into the U.S. for a period of less than 1 year are not considered to be lawfully present for benefits purposes and therefore are generally ineligible for benefits. (Aliens who have been paroled into the U.S. for a period of 1 year or longer are considered to be lawfully present.)

Conference agreement

The conference agreement generally follows the Senate amendment, as described in section 2 above.

4. LIMITED ELIGIBILITY OF LAWFULLY PRESENT ALIENS (OTHER THAN NONIMMIGRANTS) FOR FEDERAL BENEFITS

A. IN GENERAL

Present law

With the exception of certain buy-in rights under Medicare, immigrants (or aliens lawfully admitted for permanent residence) are eligible for major Federal benefits, but the ability of some immigrants to meet the needs tests for SSI, AFDC, and food stamps may be affected by the sponsor-to-alien deeming provisions discussed below. Refugees, asylees, and parolees also generally are eligible. Benefits are permitted under AFDC, SSI, unemployment compensation, and nonemergency Medicaid to other aliens permanently residing in the U.S. under color of law (PRUCOL).

House bill

With certain specific exceptions noted below, any alien who is lawfully present in the U.S. shall not be eligible for any of the following Federal means-tested public benefits programs (except as they provide non-cash, in-kind emergency services): Supplemental Security Income, Temporary Assistance for Needy Families, Social Services Block Grant (Title XX), Medicaid, and Food Stamps.

Under programs other than the foregoing 5 major benefits programs, the eligibility of lawfully present aliens (other than nonimmigrants) for benefits would continue to be governed by current law as modified by the sponsor-to-alien deeming provisions discussed below. The Attorney General is to determine which aliens are "lawfully present" and is not bound in doing so by current interpretations of "PRUCOL", or "permanently residing under color of law."

Senate amendment

Except for specific classes noted below, all aliens are to be denied SSI.

Except for specific classes and programs noted below, all aliens arriving after enactment are ineligible for all Federal needs-based assistance for 5 years after entry.

Except for specific classes and programs noted below, States may deny noncitizens need-based assistance funded by the Federal Government (e.g., Temporary Assistance for Needy Families and similar block grants).

For lawfully present aliens who are in the U.S. on the date of enactment and who have been here 5 years, current rules will continue to apply to programs other than SSI, except as eligibility may be affected by the State option to deny noncitizens needs-based assistance funded by Federal funds.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with the following modifications:

(1) current resident aliens and those arriving after enactment (with the exception of the specific classes described below) may not receive SSI or food stamps until attaining citizenship or working long enough (that is, at least 10 years) to qualify for Social Security retirement benefits;

(2) aliens have no entitlement to benefits;

(3) States have the option of providing benefits to lawfully present aliens under the TANF, Medicaid, or Title XX programs; and

(4) new entrants are denied benefits under all mandatory Federal means-tested programs for five years after their entry into the U.S. with the exception of those programs described in section (4)(B) below.

B. EXCEPTED PROGRAMS

Present law

Not applicable. (See above.)

House bill

Only exception is for non-cash, in-kind emergency services, as described above.

Senate amendment

The 5-year bar on Federally-funded assistance to new arrivals does not apply to:

(1) emergency medical services under Medicaid;

(2) short-term emergency disaster relief;

(3) assistance under the National School Lunch Act or the Child Nutrition Act of 1966;

(4) the Head Start program;

(5) foster care and adoption assistance (but foster parents or adoptive parents cannot be aliens who are ineligible for benefits due to this provision);

(6) public health assistance for immunizations and, if found necessary by HHS, testing for and treatment of communicable diseases; and

(7) programs specified by the Attorney General that (i) deliver services at the community level, (ii) do not condition assistance on the recipient's income or resources, and (iii) are necessary to protect life, safety, or public health (e.g. soup kitchens).

States may deny needs-based assistance funded by the Federal government to all noncitizens except (1) programs described above in 1, 2, 3, 4, 6, or 7; or (2) assistance to noncitizens in the classes described below.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that the following programs are also excepted: (1) programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and (2) means-tested programs under the Elementary and Secondary Education Act of 1965.

C. EXCEPTED CLASSES

Present law

Not applicable. (See above.)

House bill

Excepted are: (i) refugees during their first 5 years in the U.S. (ii) aliens who have been lawfully admitted to the U.S. for permanent residence, are over 75 years of age, and have resided in U.S. for at least 5 years; (iii) honorably discharged veterans and active duty personnel or their spouses and unmarried dependent children lawfully residing in any State or territory or possession of the U.S.; (iv) aliens lawfully residing in any State or Territory or Possession of the U.S. during the first year of enactment; and (v) immigrants who are unable to comply with naturalization requirements because of disability or mental impairment.

Senate amendment

Excepted are: (i) refugees during their first 5 years in the U.S.; (ii) honorably discharged veterans (if determined by the Attorney General to be lawfully present), and their spouses and unmarried dependent children; (iii) aliens receiving SSI benefits on the date of enactment (whose eligibility would end) will remain eligible for SSI until January 1, 1997; (iv) asylees (including those who have had deportation stayed because it would return them to a country which would persecute them) during their first 5 years in the U.S.; (v) noncitizens who have worked long enough to be fully insured for Social Security or disability insurance benefits are exempt from the ban on SSI and the prospective 5 year ban; and (vi) agencies may exempt individuals who have been battered or subjected to extreme cruelty from the denial of State-administered Federal benefits (and the sponsor-alien "deeming" provision discussed below) if the resulting denial of assistance will endanger their well-being.

Conference agreement

The conference agreement follows the House bill and the Senate amendment so that the following classes are excepted:

(1) refugees (during their first 5 years in the U.S.), asylees (for 5 years after being adjudicated as an asylee), and aliens whose deportation has been withheld (during their first 5 years after their deportation has been withheld);

(2) aliens who have been lawfully admitted to the U.S. for permanent residence and have worked at least 40 quarters (that is, at least 10 years which is currently the criteria for eligibility for Social Security retirement benefits), when a worker reaches retirement age;

(3) honorably discharged veterans and active duty personnel or their spouses and unmarried dependent children lawfully residing in any State, territory, or possession of the U.S.; and

(4) lawfully present aliens receiving SSI or food stamps on the date of enactment, whose eligibility would end January 1, 1997.

D. EFFECTIVE DATE(S)

Present law

Not applicable.

House bill

In general, applies to applicants for benefits after the date of enactment. For current residents of the U.S. on the date of enactment, restriction on eligibility does not apply until 1 year after enactment.

Senate amendment

In general, applies to benefits on or after the date of enactment. Current SSI recipients lose eligibility after January 1, 1997. The Attorney General must adopt regulations to verify the eligibility of applicants for Federal benefits no later than 18 months after enactment. States must have a verification system that complies with these regulations within 24 months of their adoption.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that the eligibility of current resident noncitizens receiving SSI and food stamps on the date of enactment ends for months beginning on or after January 1, 1997.

E. REAPPLICATION

Present law

An individual who is eligible for SSI but who thereafter becomes ineligible for a period of 12 consecutive months must reapply for benefits.

House bill

No provision.

Senate amendment

Individuals receiving SSI benefits on the date of enactment who are notified of their termination of eligibility may reapply for benefits within 4 months after the date of enactment. The Commissioner of Social Security shall determine within 1 year of enactment the eligibility of individuals who reapply within 1 year after enactment.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that similar reapplication procedures are established with regard to food stamps.

5. NOTIFICATION

Present law

Under regulation, individual advance written notice must be given of an intent to suspend, reduce, or terminate SSI benefits.

House bill

Each Federal Agency that administers an affected program shall post information and provide general notification to the public and to program recipients of changes regarding eligibility.

Senate amendment

The Commissioner of Social Security shall notify noncitizens made ineligible for SSI benefits within 3 months after the date of enactment.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

6. VERIFICATION AND INFORMATION SHARING

Present law

State agencies that administer most major Federal programs with alienage restrictions generally use the SAVE (Systematic Alien Verification for Entitlements) system to verify the immigration status of aliens applying for benefits.

AFDC and SSI require safeguards that restrict the use or disclosure of information concerning applicants or recipients to purposes connected to the administration of needs-based Federal programs.

House bill

No provision.

Senate amendment

The Attorney General must adopt regulations to verify the lawful presence of applicants for Federal benefits no later than 18 months after enactment. States must have a verification system that complies with these regulations within 24 months of their adoption.

The agencies which administer SSI, housing assistance programs under the United States Housing Act of 1937, or block grants for temporary assistance for needy families (the successor program to AFDC) are required to furnish information to the Immigration and Naturalization Service (INS) about aliens they know to be unlawfully in the United States at least 4 times annually and upon INS request.

Conference agreement

The conference agreement follows the Senate amendment, except with regard to agencies required to furnish information to the INS, which was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

CHAPTER 2—ELIGIBILITY FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS

7. INELIGIBILITY OF ILLEGAL ALIENS FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS

Present law

Under *Plyler v. Doe* (457 U.S. 202 (1982)), States may not deny illegal alien children access to a public elementary education. However, the narrow 5–4 Supreme Court decision may imply that illegal aliens may be denied at least some State benefits and that Congress may influence the eligibility of illegal aliens for State benefits. Many, but not all, State general assistance laws currently deny illegal aliens means-tested general assistance.

House bill

No alien who is not lawfully present in the U.S. shall be eligible for any State and local means-tested public benefits programs (see definitions below). The only exception is emergency medical services.

Senate amendment

No provision affects programs wholly administered and funded by State or local governments. Aliens who are not lawfully present are ineligible for benefits paid with Federal funds under State-administered programs (or paid with State funds pursuant to such programs).

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

8. INELIGIBILITY OF NONIMMIGRANTS FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS

Present law

Currently, there is no Federal law barring nonimmigrants from State and local needs-based programs. In general, States are restricted in denying assistance to nonimmigrants where the denial is inconsistent with the terms under which the nonimmigrants were admitted. Where a denial of benefits is not inconsistent with Federal immigration law, however, States have broader authority to deny benefits and States often do deny certain benefits to nonimmigrants. Also, aliens in most nonimmigrant categories generally may have difficulty qualifying for many State and local benefits because of requirements that they be State "residents."

House bill

No alien who is lawfully present in the U.S. as a non-immigrant shall be eligible for any State and local means-tested public benefit programs. Exceptions for: non-cash emergency assistance (including emergency medical services) aliens granted asylum, and certain temporary agricultural workers who are treated as immigrants for purposes of application for State and local means-tested benefits (see below). Aliens paroled into the U.S. for a period of less than 1 year are considered to be nonimmigrants under this part.

Senate amendment

No provision affects programs wholly administered and funded by State or local governments. Nonimmigrants are not considered to be lawfully present for Federal benefits purposes and are thus ineligible for benefits paid with Federal funds under State-administered programs (or paid with State funds pursuant to such programs).

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

9. STATE AUTHORITY TO LIMIT ELIGIBILITY OF IMMIGRANTS FOR STATE AND LOCAL MEANS–TESTED PUBLIC BENEFITS PROGRAMS

Present law

Under *Graham v. Richardson* (403 U.S. 365 (1971)), States are barred from denying legal permanent residents from State-funded assistance that is provided to equally needy citizens.

House bill

States are authorized to determine eligibility requirements for aliens who are lawfully present in the U.S. for any State and local means-tested public benefit program (other than non-cash emergency assistance, including emergency medical services), with exception of:

(i) refugees during their first 5 years in the U.S.;

(ii) Aliens who have been lawfully admitted to the U.S. for permanent residence, are over 75 years of age, and have resided in U.S. for five years;

(iii) Honorably discharged veterans and active duty personnel or their spouses and unmarried dependent children lawfully residing in any State or territory or possession of the U.S.; and

(iv) Aliens lawfully residing in any State or Territory or possession of the U.S. during the first year after the date of enactment. Aliens lawfully present would remain eligible for emergency medical services.

In addition to enhancing State discretion to impose alienage restrictions, eligibility for State and local needs-based benefits also would be restricted by application of new sponsor-to-alien deeming requirements discussed below.

Senate amendment

No provision restricts benefits wholly funded by State or local governments, but States may use the sponsor-alien deeming provisions, described below, to determine whether a sponsored individual qualifies for assistance under such a program.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

CHAPTER 3—ATTRIBUTION OF INCOME AND AFFIDAVITS OF SUPPORT

10. REQUIREMENTS FOR AFFIDAVITS OF SUPPORT

A. WHEN REQUIRED AND ENFORCEABILITY

Present law

Administrative authorities may request an affidavit of support on behalf of an alien seeking permanent residency. Requirements for affidavits of support are not specified under current law.

Under the Immigration and Nationality Act, an alien who is likely to become a public charge may be excluded from entry unless this restriction is waived, as is the case for refugees. By regulation and administrative practice, the State Department and the Immigration and Naturalization Service permit a prospective permanent resident alien (also immigrant or green card holder) who otherwise would be excluded as a public charge (i.e., insufficient means or prospective income) to overcome exclusion through an affidavit of support or similar document executed by an individual in the U.S. Individuals who execute affidavits of support commonly are called sponsors, even though that term also is used under immigration practice to refer to individuals and other entities who undertake various other acts (e.g., file a visa preference petition for a relative or prospective employee or undertake to resettle individuals who enter in refugee status) and who may or may not also execute affidavits of support. About one-half of the aliens who obtain legal permanent resident status have had affidavits of support filed on their behalf.

Various State court decisions and decisions by immigration courts have held that these affidavits, as currently constituted, do not impose a binding obligation on the sponsor to reimburse State agencies providing aid to the sponsored alien.

House bill

When affidavits of support are required, they must comply with the following:

(A) no affidavit of support may be accepted to overcome a public charge exclusion unless the affidavit is executed as a contract that is legally enforceable against the sponsor by the Federal Government and by any State or local government with respect to any means-tested benefits paid to the sponsored alien before the alien becomes a citizen. However, affidavits of support are not to be construed to provide any right to sponsored aliens;

(B) any Federal, State or local means-tested benefits paid to sponsored alien;

(C) to qualify to execute an affidavit of support, an individual must be within the definition of sponsor set out in item G(1), below;

(D) governmental entities that provide benefits may seek reimbursement up to 10 years after a sponsored alien last receives benefits. In the affidavit of support, the sponsor must agree to submit to the jurisdiction of any Federal or State court regarding reimbursement of the cost of benefits received by the alien; and

(E) sponsorship extends until alien becomes a citizen.

Senate amendment

When affidavits of support are required, they must comply with the following:

(A) no affidavit of support may be relied upon to overcome a public charge exclusion unless the affidavit is executed as a contract that is legally enforceable against the sponsor by the sponsored alien and by Federal, State, and local governmental entities that provide the sponsored alien with means-tested assistance during the support period described below;

(B) programs for which reimbursement shall be requested are: (1) AFDC or its successor; (2) Medicaid; (3) Food Stamps; (4) SSI; (5) any State general assistance program; and (6) any other Federal, State, or local need-based program. However, governmental entities cannot seek reimbursement with respect to (1) emergency medical services under Medicaid; (2) short-term emergency disaster relief; (3) assistance provided under the National School Lunch Act or the Child Nutrition Act of 1966; (4) the Head Start program; (5) public health assistance for immunizations and, if determined necessary by HHS, testing for or treatment of communicable diseases; and (6) programs specified by the Attorney General that (i) deliver services at the community level, (ii) do not condition assistance on the recipient's income or resources, and (iii) are necessary to protect life, safety, or public health (e.g., soup kitchens);

(C) to qualify to execute an affidavit of support, an individual must be within the definition of sponsor set out in item G(1), below;

(D) governmental entities may seek reimbursement of other means-tested assistance up to 10 years after a sponsored alien last receives benefits. In the affidavit of support, the sponsor must agree to submit to the jurisdiction of any Federal or State court regarding reimbursement of the cost of benefits received by the alien; and

(E) sponsor must agree in the affidavit of support to provide sufficient financial support so that the sponsored individual will not become a public charge until the individual has worked in the U.S. for 40 qualifying quarters, regardless of whether the individual chooses to naturalize or not. A qualifying quarter is a 3-month period (1) which counts as a quarter for the purposes of social security coverage, (2) during which the individual did not receive needs-based assistance, and (3) which occurs in a tax year for which the individual had income tax liability.

Conference agreement

The conference agreement follows the House bill and the Senate amendment as follows:

When affidavits of support are required, they must comply with the following:

(A) no affidavit of support may be accepted to overcome a public charge exclusion unless the affidavit is executed as a contract that is legally enforceable against the sponsor by the Federal Government with respect to any mandatory means-tested benefits paid to the sponsored alien before the alien becomes a citizen. However, affidavits of support are not to be construed to provide any right to sponsored aliens;

(B) programs for which reimbursement shall be requested are: (1) AFDC or its successor; (2) Medicaid; (3) Food Stamps; (4) SSI; and (5) other mandatory Federal need-based programs. However, governmental entities cannot seek reimbursement with respect to (1) emergency medical services under Medicaid; (2) short-term emergency disaster relief; (3) assistance provided under the National School Lunch Act or the Child Nutrition Act of 1966; (4) the Head Start program; (5) public health assistance for immunizations and, if determined necessary by HHS, testing for or treatment of communicable diseases; (6) programs specified by the Attorney General that (i) deliver services at the community level, (ii) do not condition assistance on the recipient's income or resources, and (iii) are necessary to protect life, safety, or public health (e.g., soup kitchens); and (7) postsecondary education benefits (however, in the event a permanent resident alien applies for Federal student loans, the sponsor or citizen must cosign the loan);

(C) to qualify to execute an affidavit of support, an individual must be within the definition of sponsor set out in item G(1), below;

(D) governmental entities that provide benefits may seek reimbursement up to 10 years after a sponsored alien last receives benefits. In the affidavit of support, the sponsor must agree to submit to the jurisdiction of any Federal or State court regarding reimbursement of the cost of benefits received by the alien; and

(E) sponsorship extends until alien becomes a citizen.

The allowance for treatment of communicable diseases is very narrow. The conferees intend that it only apply where absolutely necessary to prevent the spread of such diseases. This is only a stopgap measure until the deportation of a person or persons unlawfully here. It is *not* intended to provide authority for continued treatment of such diseases for a long term.

The allowance for emergency medical services under Medicaid is very narrow. The conferees intend that it only apply to medical care that is *strictly* of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein.

B. FORMS

Present law

No statutory provision. The Department of Justice issues a form (Form I–134) that complies with current sponsorship guidelines.

House bill

The Attorney General, in consultation with the Secretary of State and the Secretary of HHS, shall formulate an affidavit of support within 90 days after enactment, consistent with this section.

Senate amendment

The Attorney General, the Secretary of State, and the Secretary of HHS shall jointly formulate an affidavit of support within 90 days after enactment, consistent with this section.

Conference agreement

The conference agreement follows the House bill.

C. STATUTORY CONSTRUCTION

Present law

No provision.

House bill

Nothing in this section shall be construed to grant third party beneficiary rights to any sponsored alien under an affidavit of support.

Senate amendment

The Senate amendment expressly requires that affidavits of support permit sponsored individuals to enforce support obligations of their sponsors as contained in the affidavits.

Conference agreement

The conference agreement follows the Senate amendment.

D. NOTIFICATION OF CHANGE OF ADDRESS

Present law

There is no express requirement under current administrative practice that sponsors inform welfare agencies of a change in address. However, a sponsored alien who applies for benefits for which deeming is required must provide various information regarding the alien's sponsor.

House bill

Until they no longer are potentially liable for reimbursement of benefits paid to sponsored aliens, sponsors must notify welfare agencies of any change of their address within 30 days of moving. Failure to notify may result in a civil penalty of up to $2,000 or, if the failure occurs after knowledge that the sponsored alien has received a reimbursable benefit, of up to $5,000.

Senate amendment

Until they no longer are potentially liable for reimbursement of benefits paid to sponsored individuals, sponsors must notify the Attorney General and the State, district, territory or possession in which the sponsored individual resides of any change of their address within 30 days of moving. Failure to notify may result in a civil penalty of up to $2,000 or, if the failure occurs after knowledge that the sponsored individual has received a reimbursable benefit, of up to $5,000.

Conference agreement

The conference agreement follows the Senate amendment.

E. REIMBURSEMENT PROCEDURES

Present law

Various State court decisions and decisions by immigration courts have held that these affidavits, as currently constituted, do not impose a binding obligation on the sponsor to reimburse State agencies providing aid to the sponsored alien.

House bill

If a sponsored alien receives any benefit under any means-tested public assistance program, the appropriate Federal, State, or local official shall request reimbursement by the sponsor in the amount of such assistance. Thereafter the official may seek reimbursement in court if the sponsor fails to respond within 45 days of the request that the sponsor is willing to begin repayments. The official also may seek reimbursement through the courts within 60 days after a sponsor fails to comply with the terms of repayment. The Attorney General in consultation with the Secretary of HHS, shall prescribe regulations on requesting reimbursement. No action may be brought later than 10 years after the alien last received benefits.

Senate amendment

Upon notification that a sponsored individual has received a reimbursable need-based benefit (see above), the appropriate government official shall request reimbursement in accordance with the same procedures and limitations that are in the House bill. The Commissioner of Social Security is to prescribe regulations for requesting reimbursement from sponsors, and such regulations must include the notification of sponsors (at their last known address) by certified mail.

Conference agreement

The conference agreement follows the House bill.

F. JURISDICTION

Present law

State law sets forth which types of cases its courts will hear, subject to due process requirements on minimal connections between activities, people, or property within the State and the matter being litigated.

House bill

No provision.

Senate amendment

No State court shall decline for lack of jurisdiction to hear any action brought against a sponsor for reimbursement for the cost of any benefit if the sponsored individual received public assistance while residing in the State.

Conference agreement

The conference agreement follows the Senate amendment. The conferees intend that both Federal and State courts have jurisdiction over reimbursement actions against a sponsor.

G. DEFINITIONS

Present law

No provision.

House bill

A "Sponsor" is an individual who (1) is a citizen or national of the U.S. or an alien who is lawfully admitted to the U.S. for permanent residence; (2) is at least 18 years of age; and (3) resides in any State.

A "Means-Tested Public Benefits Program" is a program of public benefits of the Federal, State or local government in which eligibility or the amount of benefits or both are determined on the basis of income, resources, or financial need.

Senate amendment

A "Sponsor" is an individual who (1) is a citizen or national of the U.S. or an alien who is lawfully admitted to the U.S. for permanent residence; (2) is at least 18 years of age; (3) resides in any

State or U.S. territory; and (4) is able to demonstrate (through evidence which includes attested copies of tax returns for the 2 most recent tax years) the means to maintain an income equal to 200% of the Federal poverty line for the individual and the individual's family, including the person sponsored.

"Federal Poverty Line" has the same meaning as in section 673(2) of the Community Services Block Grant Act.

A "Qualifying Quarter" is a 3-month period (1) in which the sponsored individual earned at least the minimum necessary for the period to count as one of 40 calendar quarters required to qualify for Social Security retirement benefits; (2) during which the sponsored individual did not receive need-based public assistance; and (3) which falls within a tax year for which the sponsored individual had income tax liability.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, except that the sponsor is not required to demonstrate the means to maintain an income equal to 200% of the poverty level and the Senate recedes on the conditions that a qualifying quarter is (1) one in which the sponsored individual did not receive need-based public assistance, and (2) which falls within a tax year for which the sponsored individual has tax liability. The sponsor must also be the person petitioning for the alien's admission.

H. CLERICAL AMENDMENT

Present law

Not applicable.

House bill

A minor clerical amendment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

I. EFFECTIVE DATE

Present law

Not applicable.

House bill

The changes regarding affidavits of support shall apply to affidavits of support executed no earlier than 60 days or later than 90 days after the Attorney General promulgates the form.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

11. ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO SPONSORED IMMIGRANTS

A. FEDERAL BENEFITS

Present law

In determining whether an alien meets the means test for Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), and Food Stamps, the resources and income of an individual who filed an affidavit of support for the alien (and the income and resources of the individual's spouse) are taken into account during a designated period after entry.

House bill

During the applicable deeming period, the income and resources of an individual who files a binding affidavit of support (as required above) for an alien (and the income and resources of the individual's spouse) are taken into account under all Federal means-tested programs (with the exception of housing-related assistance) in determining a sponsored alien's neediness. Current law remains effective for aliens whose sponsors filed affidavits before the new affidavit requirements become effective (60–90 days after enactment).

Senate amendment

During the applicable deeming period, the income and resources of an individual who filed an affidavit of support for an alien (and the income and resources of the individual's spouse) are to be taken into account under all Federally-funded means-tested programs (with the exception of the programs below) in determining the sponsored individual's neediness.

Excepted programs are (1) emergency Medicaid services; (2) short-term emergency disaster relief; (3) assistance provided under the National School Lunch Act or the Child Nutrition Act of 1966; (4) the Head Start program; (5) public health assistance for immunizations and, if determined by HHS, testing for or treatment of communicable diseases; and (6) programs specified by the Attorney General that (i) deliver services at the community level, (ii) do not condition assistance on the recipient's income or resources, and (iii) are necessary to protect life, safety, or public health (e.g. soup kitchens).

Individuals who are exempt from deeming include (1) honorably discharged legal alien veterans and their spouses and unmarried children; (2) refugees; (3) asylees (including aliens who have had their deportation stayed because it would return them to a country which will persecute them); and (4) individuals who have been battered or subjected to extreme cruelty, if application of deeming would endanger their well-being.

Conference agreement

The conference agreement follows the Senate amendment, except that post-secondary education is included as an excepted program and battered individuals are not included as an excepted class.

The allowance for treatment of communicable diseases is very narrow. The conferees intend that it only apply where absolutely necessary to prevent the spread of such diseases. This is only a stop-gap measure until the deportation of a person or persons unlawfully here. It is *not* intended to provide authority for continued treatment of such diseases for a long term.

The allowance for emergency medical services under Medicaid is very narrow. The conferees intend that it only apply to medical care that is *strictly* of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein.

B. AMOUNT OF INCOME AND RESOURCES DEEMED

Present law

While the offset formulas vary among the programs, the amount of income and resources deemed under AFDC, SSI, and Food Stamps is reduced by certain offsets to provide for some of the sponsor's own needs.

House bill

The full income and resources of the sponsor and the sponsor's spouse are deemed to be that of the sponsored alien.

Senate amendment

If an agency determines that a sponsored individual would not be able to obtain food and shelter without the agency's assistance (taking into account the income and resources actually provided to the individual by the sponsor and others), then deeming will not apply for a period of 12 months and the agency need take into account during this period only the amount of support the sponsor actually provides.

If the address of the sponsor is unknown to the sponsored individual, then assistance is provided until 12 months after the sponsor is located.

Conference agreement

The conference agreement follows the House bill.

C. LENGTH OF DEEMING PERIOD

Present law

For AFDC and Food Stamps, sponsor-to-alien deeming applies to a sponsored alien seeking assistance within 3 years of entry. Until September 1996, sponsor-to-alien deeming applies to a sponsored alien seeking SSI within 5 years of entry.

House bill

For aliens whose sponsors have filed binding affidavits of support as required above, the sponsors' income and resources are deemed to the alien until the alien becomes a citizen. Current law remains effective for aliens whose sponsors filed affidavits before the new affidavit requirements become effective (60–90 days after enactment).

Senate amendment

Deeming applies until the immigrant has worked 40 qualifying quarters (the period of time future sponsors must agree to support the immigrant) or for 5 years from the alien's arrival in the U.S. (for current noncitizens), whichever is longer. Deeming continues until the above requirements are met, regardless of whether the immigrant naturalizes or not. [A qualifying quarter is a 3-month period (1) in which the sponsored individual earned at least the minimum necessary for the period to count as one of 40 calendar quarters required to qualify for Social Security retirement benefits; (2) during which the sponsored individual did not receive need-based public assistance; and (3) which falls within a tax year for which the sponsored individual had income tax liability.]

Conference agreement

The conference agreement follows the House bill.

D. STATE AND LOCAL BENEFITS

Present law

The highest courts of at least 2 States have held that the Supreme Court decision barring State discrimination against legal aliens in providing State benefits (*Graham v. Richardson*, 403 U.S. 365 (1971)) prohibits State sponsor-to-alien deeming requirements for State benefits.

House bill

In determining the eligibility and amount of benefits of an alien for any State or local means-tested public benefit program, the income and resources of the alien shall be deemed to include the income and resources of their sponsor (and their sponsor's spouse). Housing related assistance continues to be treated as under current law.

Senate amendment

With the exception of those programs exempted from all benefit restrictions (see above) and those aliens exempt from deeming requirements, States and local governments may deem a sponsor's income and resources (and those of the sponsor's spouse) to a sponsored individual in determining eligibility for and the amount of needs-based benefits. State deeming provisions must also provide for temporary assistance if the sponsor is not assisting the sponsored individual or cannot be located.

Conference agreement

The conference agreement follows the Senate amendment. This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

CHAPTER 4—GENERAL PROVISIONS

12. DEFINITIONS

A. IN GENERAL

Present law

Federal assistance programs that have alien eligibility restrictions generally reference specific classes defined in the Immigration and Nationality Act.

House bill

Unless otherwise provided, the terms used in this title have the same meaning as defined in Section 101(a) of the Immigration and Nationality Act.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

B. LAWFUL PRESENCE

Present law

Some programs allow benefits for otherwise eligible aliens who are "permanently residing under color of law (PRUCOL)." This term is not defined under the Immigration and Nationality Act, and there has been some inconsistency in determining which classes of aliens fit within the PRUCOL standard.

House bill

For purposes of this Title, the determination of whether an alien is lawfully present in the U.S. shall be made in accordance with regulations issued by the Attorney General. An alien shall not be considered to be lawfully present in the U.S. merely because the alien may be considered to be permanently residing in the U.S. under color of law ("PRUCOL") for purposes of any particular program.

Senate amendment

An individual is lawfully present if the individual is a citizen, non-citizen national (i.e. American Samoan), permanent resident alien, refugee, asylee (including an alien who has had his/her deportation stayed because it would return him/her to a country which would persecute him/her), or an alien who has been paroled into the U.S. by the Attorney General for at least 1 year. Individuals who are not lawfully present are ineligible for any Federal benefit.

Conference agreement

The conference agreement follows the Senate amendment with a modification that eligibility is determined by specific classes of aliens, not whether noncitizens are "lawfully present."

C. STATE

Present law

There is no single definition of "State" for purposes of alien eligibility under Federal assistance programs. The Immigration and Nationality Act defines "State" to include the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

House bill

The term "State" includes the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

D. PUBLIC BENEFITS PROGRAMS

Present law

No provision.

House bill

A "Means-Tested Program" is a program of public benefits of the Federal government in which eligibility for benefits under the program, or the amount of benefits, or both, are determined on basis of income, resources or financial need.

A "Federal Means-Tested Public Benefits Program" is a means-tested public benefit program of (or contributed to by) the Federal Government under which the Federal Government establishes standards for eligibility.

A "State Means-Tested Public Benefits Program" is a means-tested program of a State or political subdivision under which the State or political subdivision specifies the standards of eligibility, and does not include any Federal means-tested public benefits program.

Senate amendment

"Federal Benefit" means any grant, contract loan, professional or commercial license, retirement benefit, health or disability benefit, public housing, food stamps, higher education benefits, unemployment benefit, or any similar benefit provided by a Federal agency or with appropriated Federal funds. (Individuals who are not lawfully present are ineligible for Federal benefits.)

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

13. CONSTRUCTION

Present law

Not applicable.

House bill

Nothing in this title shall be construed as addressing alien eligibility for governmental programs that are not means-tested public benefits programs.

Senate amendment

The Senate amendment's bar to Federal benefits for individuals who are not lawfully present covers a wide range of contracts, grants, licenses, and other assistance that is not means-tested.

Conference agreement

The conference agreement follows the House bill with a clarification that the subtitle is silent on alien eligibility for a basic public elementary education as determined by the U.S. Supreme Court in *Plyler* v. *Doe,* 457 U.S. 202 (1982).

SUBTITLE E—CONFORMING AMENDMENTS

14. CONFORMING AMENDMENTS RELATING TO ASSISTED HOUSING

Present law

No provision.

House bill

A series of technical and conforming amendments.

Senate amendment

A series of technical and conforming amendments.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SUBTITLE E—REDUCTION IN FEDERAL GOVERNMENT POSITIONS

This Subtitle was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

SUBTITLE F—HOUSING

This Subtitle was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

SUBTITLE F—NATIONAL DEFENSE STOCKPILE

DISPOSAL OF CERTAIN MATERIALS IN THE NATIONAL DEFENSE STOCKPILE FOR DEFICIT REDUCTION

House bill

Section 8021 of the House bill contained a provision that would authorize disposal of certain materials from the National Defense Stockpile.

Senate amendment

Section 2001 of the Senate amendment contained a similar provision.

Conference agreement

The conferees agree to a provision that would require disposal of certain materials, to result in receipts to the general fund of the Treasury equal to $649.0 million by the year 2002. The disposal authority of this provision would be considered new disposal authority, meaning that it is in addition to any other disposal authority provided by law, and the authority would expire after achieving the $649.0 million revenue target. The provision would require the President to dispose of materials previously authorized for disposal under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h).

The conferees are confident that the Department of Defense process for conducting such disposals, to include review by the Market Impact Committee, will continue to ensure an orderly and successful disposal of Stockpile materials.

SUBTITLE G—CHILD PROTECTION BLOCK GRANT PROGRAM AND FOSTER CARE AND ADOPTION ASSISTANCE

1. ESTABLISHMENT OF PROGRAM

A. PURPOSE

Present law

Child Welfare Services, now provided for in Title IV–B of the Social Security Act, are designed to help States provide child welfare services, family preservation and community-based family support services, and improve State court procedures related to child welfare.

Title IV–E Foster Care and Title IV–E Adoption Assistance are intended to help States finance foster care and adoption assistance maintenance payments, administration, child placement services, and training related to foster care and adoption assistance.

The purpose of the Title IV–E Independent Living program is to help older foster children make the transition to independent living.

House bill

The House provision replaces Title IV–B and Title IV–E of the Social Security Act and several additional programs (see below) by establishing a block grant to enable eligible States to carry out child protection programs to:

(1) identify and assist families at risk of abusing or neglecting their children;

(2) operate a system for receiving reports of abuse or neglect of children;

(3) investigate families reported to abuse or neglect their children;

(4) provide support, treatment, and family preservation services to families which are, or are at risk of, abusing or neglecting their children;

(5) support children who must be removed from or who cannot live with their families;

(6) make timely decisions about permanent living arrangements for children who must be removed from or who cannot live with their families; and

(7) provide for continuing evaluation and improvement of child protection laws, regulations, and services.

Additional programs to be replaced are: the Child Abuse Prevention and Treatment Act; the Abandoned Infants Assistance Act; adoption opportunities under the Child Abuse Prevention and Treatment and Adoption Reform Act; family support centers under the McKinney Homeless Assistance Act; grants to improve investigation and prosecution of child abuse cases, and children's advocacy centers under the Victims of Child Abuse Act; crisis nurseries under the Temporary Child Care and Crisis Nurseries Act; and Family Unification under Section 8 of the Housing Act.

Senate amendment

The Senate amendment would leave intact child welfare services, foster care, adoption assistance and independent living, which are permanently authorized under Titles IV–B and IV–E of the Social Security Act. The Senate amendment would reauthorize the Child Abuse Prevention and Treatment Act; adoption opportunities; abandoned infants assistance; missing children's assistance; investigation and prosecution grants, and children's advocacy centers under the Victims of Child Abuse Act. The amendment would repeal both the Temporary Child Care and Crisis Nurseries Act and the Family Support Centers under the McKinney Homeless Assistance Act.

The Senate amendment gives the Secretary authority under CAPTA to make grants to the States for purposes of assisting the States in improving the child protective service system of each State in:

(1) screening intake, assessing, and investigating of reports of abuse and neglect;

(2) creating and improving the use of multidisciplinary teams and interagency protocols to enhance investigations;

(3) improving case management and delivery of services;

(4) enhancing the general child protection system by improving risk and safety assessment tools and protocols and automation systems;

(5) developing, strengthening, and facilitating training opportunities and requirements for individuals overseeing and providing services to children and their families;

(6) developing and facilitating training protocols for individuals mandated to report child abuse or neglect;

(7) developing, strengthening, and supporting child abuse and neglect prevention, treatment, and research programs in the public and private sectors;

(8) developing, implementing, or operating information and education programs or training programs designed to improve the provision of services to disabled infants with life-threatening conditions; and

(9) developing and enhancing the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. ELIGIBLE STATES

ELIGIBLE STATE

Present law

To be eligible for funding under Title IV–B and IV–E, States must have State plans (developed jointly with the Secretary under Title IV–B, and approved by the Secretary under Title IV–E).

House bill

An "Eligible State" is one that, during the 3-year period that ends on October 1 of the fiscal year, has submitted to the Secretary a plan that describes how the State intends to pursue the purposes described above.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. See Item 6.I., below, for summary of State eligibility under CAPTA.

Conference agreement

An "Eligible State" is one that has submitted to the Secretary, not later than October 1, 1996 and every three years thereafter, a plan (as described below) which has been signed by the Chief Executive officer of the State.

OUTLINE OF CHILD PROTECTION PROGRAM

Present law

States must have a child welfare services plan developed jointly by the Secretary and the relevant State agency which provides for single agency administration and describe services to be provided and geographic areas where services will be available, among numerous other requirements. To receive their full allotment of incentive funds under Title IV–B, States also must comply with extensive Federal Section 427 protections. The State plan also must meet many other requirements, such as setting forth a 5-year statement of goals for family preservation and family support and assuring the review of progress toward those goals. For foster care and adoption assistance, States must submit for approval a Title IV–E plan providing for a foster care and adoption assistance program and satisfying numerous requirements. The Child Abuse Prevention and Treatment Act requires States to have in effect a law for reporting known and suspected child abuse and neglect as well as providing for prompt investigation of child abuse and neglect reports, among many other requirements.

House bill

A State plan must include the following outline of Child Protection Program including procedures to be used for:

a. receiving reports of child abuse or neglect;

b. investigating such reports;

c. protecting children in families in which child abuse or neglect is found to have occurred;

d. removing children from dangerous settings;

e. protecting children in foster care;

f. promoting timely adoptions;

g. protecting the rights of families, using adult relatives as the preferred placement for children separated from their parents if such relatives meet all relevant standards;

h. preventing child abuse and neglect; and

i. establishing and responding to citizen review panels.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. CAPTA requires a 5-year plan that is coordinated with the State plan for child welfare services and family preservation. For amendments to CAPTA requirements, see Section 6 of this document, below.

Conference agreement

A State plan must include information on the Child Protection Program including procedures to be used for:

a. receiving and assessing reports of child abuse or neglect;

b. investigating such reports;

c. with respect to families in which abuse or neglect has been confirmed, providing services or referral for services for families and children where the State makes a determination that the child may safely remain.

d. protecting children by removing them from dangerous settings and ensuring their placement in a safe environment;

e. providing training for individuals mandated to report suspected cases of child abuse or neglect;

f. protecting children in foster care;

g. promoting timely adoptions;

h. protecting the rights of families, using adult relatives as the preferred placement for children separated from their parents if such relatives meet all relevant standards;

h. providing services aimed at preventing child abuse and neglect; and

i. establishing and responding to citizen review panels.

Certifications

Present law

To receive funds under the Child Abuse Prevention and Treatment Act, States must have a law in effect that provides for reporting of known and suspected instances of child abuse and neglect and provides immunity from prosecution for reporters of abuse or neglect. States also must have a program to investigate allegations of abuse or neglect, must preserve confidentiality of records, provide that every abused or neglected child involved in a court proceeding is represented by a guardian ad litem. To receive funding under Title IV–B and IV–E of the Social Security Act, States must comply with certain procedures for removal of children from their families when necessary, and must develop case plans for each child that are reviewed at least every six months and contain specified information.

House bill

Also included in the submitted plan must be the following certifications:

a. certification of State law requiring reporting of child abuse and neglect;

b. certification of State program to investigate child abuse and neglect cases;

c. certification of State procedures for removal and placement of abused or neglected children;

d. certification of State procedures for developing and reviewing written plans for permanent placement of each child removed from the family that:

(1) specifies the goal for achieving a permanent placement for the child in a timely fashion;

(2) ensures that the plan is reviewed every 6 months; and

(3) ensures that information about the child is gathered regularly and placed in the case record;

e. certification that when the State begins operating under the block grant on or after October 1, 1995, families receiving adoption assistance payments at that time continue to receive adoption assistance payments;

f. certification of State program to provide Independent Living services to 16–19 year old youths (at State option to age 21) who are in the foster care system but have no family to turn to for support;

g. certification of State procedures to respond to reporting of medical neglect of disabled infants; and

h. a declaration of State child welfare goals; States must, within 3 years of the date of passage, report quantifiable information on whether they are making progress toward achieving their self-defined child protection goals. (See Data Collection and Reporting, item G. below).

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. CAPTA requires several certifications, many of which are identical to those outlined for the House bill. For amendments to CAPTA requirements, see Section 6 of this document, below.

Conference agreement

The following certifications must be included in the State plan:

(1) certification of State law requiring reporting of child abuse and neglect;

(2) certification of State procedures for the immediate screening, safety assessment, and prompt investigation of such reports;

(3) certification of State procedures for the removal and placement of abused or neglected children;

(4) certification of State laws requiring immunity from prosecution under State and local laws for individuals making good faith reports of suspected or known cases of child abuse or neglect;

(5) certification of State law and procedures for expungement of any public records on false or unsubstantiated cases;

(6) certification of State laws and procedures affording individuals an opportunity to appeal an official finding of abuse or neglect;

(7) certification of State procedures for developing and reviewing written plans for permanent placement of each child removed from the family that:

(A) specifies the goal for achieving a permanent placement for the child in a timely fashion;

(B) ensures that the plan is reviewed every 6 months; and

(C) ensures that information about the child is gathered regularly and placed in the case record;

(8) certification of State program to provide Independent Living services to 16–19 year old youths (at State option to age 21) who are in the foster care system but have no family to turn to for support;

(9) certification of State procedures to respond to reporting of medical neglect of disabled infants;

(10) a declaration of quantifiable State child welfare goals;

(11) with respect to fiscal years beginning on or after April 1, 1996, certification that—

(A) the State has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined—

(i) the appropriateness of, and necessity for, the foster care placement;

(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;

(B) is operating to the satisfaction of the Secretary—

(i) a statewide information system on children who are or have been in foster care in the last year;

(ii) a case review system for each child receiving foster care under the supervision of the State;

(iii) a service program designed to help children—

(I) return to families from which they have been removed; or

(II) be placed for adoption

(iv) a preplacement preventive service program; and

(C) has reviewed (or, will review by October 1, 1997) State policies and procedures in effect for children abandoned at birth; and is implementing (or, will implement by October 1, 1997) such policies or procedures to enable permanent decisions to be made expeditiously with respect to the placement of such children.

(12) certification of reasonable efforts to prevent placement of children in foster care; and

(13) certification of cooperative efforts to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments.

DETERMINATIONS

Present law

State Title IV–B plans are developed jointly with the Secretary. State Title IV–E plans must be approved by the Secretary. The Secretary must approve any plan that complies with statutory provisions.

House bill

The Secretary of HHS must determine whether the State plan includes all of the elements required above but cannot add new elements or review the adequacy of State procedures. The Secretary may not require a State to alter its child protection law regarding determination of the adequacy, type and timing of health care.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. See item 6.N., below for description of similar CAPTA provision on medical care.

Conference agreement

The Secretary of HHS must determine whether the State plan includes the required materials and certifications (except material related to the certification of State procedures to respond to reporting of medical neglect of disabled infants). The Secretary cannot add new elements beyond those listed above.

C. GRANTS TO STATES FOR CHILD PROTECTION

ENTITLEMENT

Present law

Titles IV–B and IV–E of the Social Security Act contain several types of funding, including substantial entitlement funding, for helping States provide assistance to troubled families and their children.

House bill

The block grant money is guaranteed funding to States. Each eligible State is entitled to receive from the Secretary an amount equal to the State share of the Child Protection Grant amount for fiscal years 1996 through 2000.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. See item 6, below for description of similar CAPTA provision.

Conference agreement

As explained above, the Child Protection Block Grant includes a capped entitlement component for States. Each eligible State is entitled to receive from the Secretary an amount equal to the State share of the Child Protection Grant amount which increases from $1.938 billion in 1996 to $2.593 in 2002. In addition, each eligible State is entitled to receive reimbursements, on an open-ended basis, for the State share of allowable expenditures on eligible children placed in qualified foster care and adoption.

CHILD PROTECTION GRANT AMOUNT

Present law

Federal funds for child welfare and child protection activities consist both of direct spending under Titles IV–B and IV–E of the Social Security Act, and appropriated funds under Title IV–B of the Social Security Act and selected additional programs, including the Child Abuse Prevention and Treatment Act. (For additional programs, see Item 1.A. of this document, above.)

House bill

The Child Protection Grant amount is composed of both a direct spending component and an appropriated component as follows: $3.930 billion in 1996, $4.195 billion in 1997, $4.507 billion in 1998, $4.767 billion in 1999, and $5.071 billion in 2000 in direct spending; and $486 million in each year 1996–2000 in appropriated spending.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. The amendment authorizes a total of $263 million for fiscal year 1996 and such sums as necessary for fiscal year 1997 through fiscal year 2000 for State grants, State demonstration projects, discretionary activities and community-based family resource and support grants under CAPTA; adoption opportunities grants; and abandoned infants assistance grants.

Conference agreement

The conference agreement generally follows the House bill, with the modification that the discretionary component of the block grant was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

STATE SHARE

Present law

No specific allocation formula governs the allocation of foster care and adoption assistance funds to States; States are reimbursed on an open-ended entitlement basis for eligible expenditures on behalf of eligible children. Independent living allocations to States are based on each State's share of Title IV–E foster children in fiscal year 1984. Family violence grants are awarded on the basis of State population. [Note: The family violence program would not be repealed by H.R. 4.] Child abuse State grants and community-based family resource grants are awarded on the basis of population under the age of 18. State allocations for child welfare services under Title IV–B are based on per capita income and population age 21 and under.

House bill

"State Share" means each State receives the same proportion of the block grant each year as it received of payments to States by the Federal government for the following selected child welfare programs in either the average of years 1992 through 1994 or in 1994, whichever is greater:

a. foster care maintenance, administration, and training;
b. adoption assistance maintenance, administration, and training;
c. title IV–E independent living awards;
d. family violence and prevention services;
e. child abuse State grants;
f. child abuse community-based prevention grants; and
g. child welfare services.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. See Item 6, below, for description of similar CAPTA provision.

Conference agreement

The conference agreement follows the House bill, except the selected child welfare programs on which the State share is to be based are:

(1) foster care administration and training;
(2) adoption assistance administration and training;
(3) child welfare services;
(4) family preservation and family support; and
(5) independent living services.

DEFINITION OF STATE

Present law

Under Titles IV–B and IV–E of the Social Security Act, "State" means the 50 States and the District of Columbia. The Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa receive funds through set-asides and under special rules.

House bill

"State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact.

Conference agreement

"State" includes the several States and the District of Columbia. The territories will carry out a child protection program in accordance with this part; entitlement funding is provided under section 1108 of the Social Security Act.

USE OF GRANT

Present law

Funds must be used for: "protecting and promoting the welfare of children . . . preventing unnecessary separation of children from their families . . . restoring children to their families if they have been removed . . . family preservation services . . . community-based family support services to promote the well-being of children and families and to increase parents' confidence and competence." Foster care maintenance and adoption assistance payments are an open-ended entitlement to individuals.

House bill

A State to which funds are paid under this section may use such funds in any manner that the State deems appropriate to accomplish the purposes of this part. Permissible spending includes, but is not limited to: abuse and neglect reporting systems, abuse and neglect prevention, family preservation, foster care, adoption, program administration, and training.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. CAPTA grants can be used for improving child protective services, investigation and reporting of abuse and neglect, case management and delivery of services to children and families, training for service providers and abuse reporters, demonstration projects, kinship care arrangements, abuse and neglect prevention, and similar activities.

Conference agreement

The conference agreement follows the House bill. A State to which funds are paid under this section may use such funds in any manner that the State deems appropriate to accomplish the purposes of this part.

TRANSFER OF FUNDS

Present law

No provision.

House bill

In fiscal year 1998 and succeeding years, States may transfer up to 30% of funds paid under this section for activities under any or all of the following: the temporary assistance for needy families block grant; the social services block grant under Title XX of the Social Security Act; the child care and development block grant; and any food and nutrition or employment and training grants enacted during the 104th Congress. Rules of the recipient program will apply to the transferred funds. Funds may be transferred into the Child Protection Block Grant from other block grants and are then subject to the rules of this part.

Senate amendment

No provision.

Conference agreement

Conferees agree that no funds can be transferred out of the block grant.

TIMING OF EXPENDITURES

Present law

Provisions vary under programs to be replaced. Under Title IV–E, States have up to two fiscal years in which to claim reimbursement for expenditures.

House bill

A State to which funds are paid under this section for a fiscal year shall expend such funds not later than the end of the immediately succeeding fiscal year.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact.

Conference agreement

The conference agreement follows the House bill.

RULE OF INTERPRETATION

Present law

For-profit foster care providers are not eligible for Federal funding under Title IV–E.

House bill

Nothing in this act shall preclude for-profit short- and long-term foster care facilities from being eligible to receive funds from this block grant.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

TIMING OF PAYMENTS

Present law

Under Title IV–B, the Secretary makes payments to States periodically. Under Title IV–E, the Secretary reimburses States for expenditures on a quarterly basis.

House bill

The Secretary must make payments on a quarterly basis.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact.

Conference agreement

The conference agreement follows the House bill.

PENALTIES

Present law

States that do not comply with Section 427 child protections may not receive their share of Title IV–B appropriations above $141 million. However, effective April 1, 1996, these protections are to become State plan requirements and the incentive funding mechanism will no longer be in effect. Section 1123 of the Social Security Act requires the Secretary to establish by regulation a new Federal review system for child welfare, which would allow penalties for misuse of funds.

House bill

The Secretary must reduce amounts otherwise payable to a State by any amount which an audit conducted under the Single Audit Act finds has been used in violation of this part. The Secretary, however, shall not reduce any quarterly payment by more than 25 percent. The amount of misspent funds will be withheld from the State's payments during the following year, if necessary, to recover the full amount of the penalty.

If an audit conducted pursuant to the Single Audit Act finds that a State has reduced its level of expenditures in fiscal year 1996 or 1997 below its level of non–Federal expenditures in fiscal year 1995 under Title IV–B or Title IV–E, the Secretary must reduce subsequent amounts otherwise payable to the State by an amount equal to the difference between State spending in fiscal year 1995 and the current year.

The Secretary must reduce by 3 percent the amount otherwise payable to a State for a fiscal year if the State has not submitted a report required (see item 7 below) for the immediately preceding fiscal year within 6 months after the end of the year. The penalty may be rescinded if the report is submitted within 12 months after the end of the year.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact.

Conference agreement

The conference agreement follows the House bill, except that an additional penalty equal to 5% of a State's block grant amount will be imposed in cases where the Secretary finds that funds have been spent in violation of the part, or where a State has failed to meet its maintenance-of-effort requirement. States will be required to maintain 100% of their fiscal year 1995 non–Federal expenditure level in fiscal year 1996 and 1997, and 75% of such expenditures in subsequent years.

The agreement provides that the Secretary may not impose a penalty if she determines that the State has reasonable cause for failing to comply with the requirement. Further, a State must be informed before any penalty is imposed and be given an opportunity to enter into a corrective compliance plan. The agreement provides a series of deadlines for submission of such corrective compliance plans, and review by the Federal government.

LIMITATION ON FEDERAL AUTHORITY

Present law

See above.

House bill

Except as expressly provided in this part, the Secretary may not regulate the conduct of States under this part or enforce any provision of this part.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact.

Conference agreement

The conference agreement follows the House bill.

D. CHILD PROTECTION STANDARDS

Present law

In order to receive its full share of appropriations for child welfare services under subpart 1 of Title IV–B, each State must meet section 427 protections, including requirements that it: conduct an inventory of children in foster care; operate a tracking system for all children in foster care; operate a case review system for all children in foster care; and conduct a service program to reunite foster children with their families if appropriate, or be placed for adoption or another permanent placement. In addition, if Federal appropriations for the program reach $325 million for two consecutive years, States also must implement a preplacement preventive services program to help children remain with their families. [This funding level has never been reached.] Effective April 1, 1996, these provisions are scheduled to become mandatory State plan requirements, rather than funding incentives, under legislation enacted on Oct. 31, 1994 (P.L. 103–432). States also will be required to review their policies and procedures regarding abandoned children and to implement policies and procedures considered necessary to enable permanent decisions to be made expeditiously with regard to placement of such children.

House bill

The following standards are included in the bill to indicate what States must do to assure the protection of children and to provide guidance to the Citizen Review Panels:

a. the primary standard by which child welfare system shall be judged is the protection of children;

b. each State shall investigate reports of abuse and neglect promptly;

c. children removed from their homes shall have a permanency plan and a dispositional hearing within 3 months after a fact-finding hearing; and

d. all child protection cases with an out-of-home placement shall be reviewed every 6 months unless the child is already in a long-term placement.

A State receiving funds from this block grant may consider: establishing a new type of permanent foster care placement referred to as "kinship care" in which adult relatives would be the preferred placement option if they met all relevant standards, and could receive needs-based payments and supportive services; and, in placing children for adoption, giving preference to adult relatives who meet applicable standards.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. CAPTA requires a number of certifications by the State, including several that are similar to standards in the House block grant. For details see Item 6.I., below.

No directly comparable provision in Titles IV–B or IV–E. Under CAPTA, the Secretary may award grants to public entities to develop or implement procedures using adult relatives as the preferred placement for children removed from their home; see item 6.H. below.

Conference agreement

In order for a State to receive foster care maintenance payments such State must certify that it has conducted an inventory of children in foster care; is operating a tracking system for all children in foster care; is operating a case review system for all children in foster care; and conducting a service program to reunite foster children with their families if appropriate, or be placed for adoption or another permanent placement.

Effective April 1, 1996, these provisions are scheduled to become mandatory State plan requirements, rather than funding incentives, under legislation enacted on Oct. 31, 1994 (P.L. 103–432). States also will be required to review their policies and procedures regarding abandoned children and to implement policies and procedures considered necessary to enable permanent decisions to be made expeditiously with regard to placement of such children.

E. CITIZEN REVIEW PANELS

Present law

No provision.

House bill

Each State to which funds are paid under this part must have at least three Citizen Review Panels. Each Panel is to be broadly representative of the community from which it is drawn.

The Panels, which must meet at least quarterly, are charged with the responsibility of reviewing cases from the child welfare system to determine whether State and local agencies receiving funds under this program are carrying out activities in accord with the State plan, are achieving the child protection standards, and are meeting any other child welfare criteria that the Panels consider important.

The members and staff of any Panel must not disclose to any person or government agency any information about specific cases. States must afford a Panel access to any information on any case that the Panel desires to review, and shall provide the Panels with staff assistance in performing their duties.

Panels must produce a public report after each meeting and States must include information in their annual report detailing their responses to the panel report and recommendations. (See Data Collection and Reporting, item G. below.)

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

F. CLEARINGHOUSE AND HOTLINE FOR MISSING AND RUNAWAY CHILDREN

Present law

The Missing Children's Assistance Act, authorized as part of the Juvenile Justice and Delinquency Prevention Act, authorizes a toll-free hotline and national clearinghouse to collect and disseminate information about missing children.

House bill

The Attorney General of the United States shall have the authority to establish and operate a national information clearinghouse, including a 24-hour toll free telephone hotline, for information on missing children cases. An appropriation not to exceed $7 million per fiscal year is authorized for this purpose.

Senate amendment

Reauthorizes the Missing Children's Assistance Act through FY 1997 (see Item 12.A. of this document, below).

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

G. DATA COLLECTION AND REPORTING

Present law

States are not required to report specific child welfare data. Section 479 requires the Secretary to publish regulations that implement a system for the collection of adoption and foster care data. These regulations were published as final on Dec. 22, 1993, and are mandatory for all States. In addition, section 13713 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66) makes available enhanced Federal matching funds (75 percent Federal match instead of 50 percent) for planning, design, development and installation of statewide automated child welfare information systems. Regulations governing these systems were published on Dec. 22, 1993, and May 19, 1995. The enhanced match expires after Sept. 30, 1996.

House bill

Three years after the effective date and annually thereafter, each State to which funds are paid under this part must submit to the Secretary a report containing quantitative information on the extent to which the State is making progress toward its child protection program goals (as described above).

Each State to which funds are paid under this part must annually submit to the Secretary of Health and Human Services a report that includes the following annual statistics:

(1) the number of children reported to the State during the year as abused or neglected;

(2) of the number of reported cases of abuse or neglect, the number that were substantiated;

(3) of the number of reported cases that were substantiated, (a) the number that received no services under the State program funded under this part; (b) the number that received services under the State program funded under this part; and (c) the number removed from their families;

(4) the number of families that received preventive services from the State;

(5) the number of children who entered foster care under the responsibility of the State;

(6) the number of children who exited foster care under the responsibility of the State;

(7) types of foster care placements made by State and the number of children in each type of care;

(8) average length of foster care placements made by State;

(9) the age, ethnicity, gender, and family income of children placed in foster care under the responsibility of the State;

(10) the number of children in foster care for whom the State has the goal of adoption;

(11) the number of children in foster care under the responsibility of the State who were freed for adoption;

(12) the number of children in foster care under the responsibility of the State whose adoptions were finalized;

(13) the number of disrupted adoptions in the State;

(14) quantitative measurements showing whether the State is making progress toward the child protection goals identified by the State;

(15) the number of infants abandoned during the year, the number of these infants who were adopted, and the length of time between abandonment and legal adoption;

(16) the number of deaths of children occurring while said children were in custody of the State;

(17) the number of deaths of children resulting from child abuse or neglect;

(18) the number of children served by the State Independent Living program;

(19) other information which the Secretary and a majority of the States agree is appropriate to collect for purposes of this part; and

(20) the response of the State to findings and recommendations of the citizen review panels.

States may fulfill the data collection and reporting requirements by collecting the required information on either individual children and families receiving child protection services or by using scientific statistical sampling methods.

Within 6 months after the end of each fiscal year, the Secretary must prepare an annual report on State data for Congress and the public.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law would remain intact. States receiving CAPTA grants must submit annual data reports to the Secretary (see Item 6.I, below). CAPTA requires States to report 10 data elements, many of which are substantially similar to the House reporting requirements.

Requires the Secretary, in administering CAPTA, to prepare annual reports, based on State data, for Congress and the national information clearinghouse on child abuse and neglect. (See Item 6.I, below.) Requires Secretary in 6 months after receiving State reports to prepare and submit annual report to Congress.

Conference agreement

The conference agreement follows the House bill with regard to annual State reports containing quantitative information showing progress toward achieving State child protection goals.

Of all children receiving publicly-supported child welfare services, the following information shall be reported every 6 months:

(1) whether the child received services under the programs funded under this part:

(2) the age, gender, and family income of the parents and child;

(3) county of residence;

(4) whether the child was removed from the family;

(5) whether the child entered foster care under the responsibility of the State:

(6) the type of out-of-home care in which the child was placed (institution, group home, family foster care, or relative placement);

(7) the child's permanency planning goal, such as family reunification, adoption, or independent living;

(8) whether the child was freed for adoption;

(9) whether the child exited from foster care, and, if so, the reason for the exit, such as return to family, placement with relatives, adoption, independent living, or death.

References to race in the information that is reported annually by States was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

States may be required to report other information approved by the Secretary and agreed to by a majority of States, including information necessary to assure a smooth transition from AFCARS and NCANDS to the data reporting system required by this legislation.

States must also submit the following aggregate data annually:

(1) the number of children reported to the State during the year as alleged victims of abuse or neglect;

(2) the number of children for whom an investigation of alleged maltreatment resulted in a determination of substantiated abuse or neglect, the number for whom maltreatment was unsubstantiated, determined to be false;

(3) the number of families that received preventive services;

(4) the number of infants abandoned during the year, the number of these infants who were adopted, and the length of time between abandonment and adoption;

(5) the number of deaths resulting from child abuse or neglect;

(6) the number of deaths of children occurring while children were in custody of the State;

(7) the number of children served by the State Independent Living Program

(8) quantitative measurements showing whether the State is making progress toward the child protection goals identified by the State;

(9) types of maltreatment suffered by victims of abuse and neglect;

(10) number of abused and neglected children receiving services;

(11) average length of stay in out-of-home care;

(12) the response of the State to findings and recommendations of the citizen review panels; and

(13) other information which the Secretary and a majority of States agree is appropriated to collect for purposes of this part.

States may fulfill the data collection and reporting requirements by collecting the required information on either individual children and families receiving child protection services or by using scientific statistical sampling methods. If States use sampling, the Secretary must review and approve their methods.

The requirement that the Secretary prepare an annual report on State data for Congress and the public was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

H. RESEARCH AND TRAINING

Present law

Current law authorizes appropriations for research under Title IV–B of the Social Security Act and the Child Abuse Prevention and Treatment Act. In FY 1995, $6 million is appropriated under Title IV–B and $9 million under CAPTA.

House bill

An appropriation of $10 million per year is authorized for the Secretary to spend at her discretion on research and training in child welfare.

Senate amendment

No directly comparable provision in Titles IV–B or IV–E. Current law under Title IV–B would remain intact, and CAPTA would be reauthorized. Although CAPTA has no separate authorization for research and training, the Secretary has discretionary authority to conduct research and training. For details see Item 6.G., below.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

I. NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE

Present law

No provision.

House bill

The Secretary is provided with $6 million per year for fiscal years 1996–2000 to conduct a national random-sample study of child welfare. The study will have a longitudinal component, yield data reliable at the State level for as many States as the Secretary determines is feasible, and should alternate data collection in small States from year-to-year to yield an occasional picture of child welfare in small States. The Secretary has discretion in drawing the sample and in selecting measures, but should carefully consider selecting the sample from all cases of confirmed abuse and neglect and then following each case over several years while obtaining such measures as type of abuse or neglect involved, frequency of contact with agencies, whether the child was separated from the family, types and characteristics of out-of-home placements, number of placements, and average length of placement. The Secretary must prepare occasional reports on this study and make them available to the public. The reports should summarize and compare the results of this study with the data reported by States. Written reports or tapes of the raw data from the study should be made available to the public at a fee the Secretary thinks appropriate.

Senate amendment

No provision.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

J. REMOVAL OF BARRIERS TO INTERETHNIC ADOPTION

Present law

State law governs adoption and foster care placement. Forty three States permit race matching either in regulation, statute, policy or practice. The Metzenbaum Multiethnic Placement Act of 1994 permits States to consider race and ethnicity in selecting a foster care or adoptive home, but States cannot delay or deny the placement of the child solely on the basis of race, color or national origin.

Noncompliance with the Metzenbaum Act is deemed a violation of title VI of the Civil Rights Act.

House bill

Section 553 of the Howard M. Metzenbaum Multiethnic Placement Act of 1994 is repealed. (See conforming amendments, item 2 below.) In addition, a State or other entity that receives Federal assistance may not deny to any person the opportunity to become an adoptive or a foster parent on the basis of the race, color, or national origin of the person or of the child involved. Similarly, no State or other entity receiving Federal funds can delay or deny the placement of a child for adoption or foster care, or otherwise discriminate in making a placement decision, on the basis of the race, color, or national origin of the adoptive or foster parent or the child involved.

A State or other entity that violates this provision during a period shall remit to the Secretary all funds that were paid to the State or entity during the period.

An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

Senate amendment

No provision.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

2. CONFORMING AMENDMENTS

Present law

No provision.

House bill

This section contains technical amendments that conform provisions of the bill to Titles IV–D and XVI of the Social Security Act, and to the Omnibus Budget Reconciliation Act of 1986, and provide for the repeal of Section 553 of the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Title IV–E of the Social Security Act, section 13712 of the Omnibus Budget Reconciliation Act of 1993, and subtitle C of Title 17 of the Violent Crime Control and Law Enforcement Act of 1994. (Under section 371 of Title III–C of the House bill, the following additional programs are repealed related to the Child Protection Block Grant: abandoned infants assistance, the Child Abuse Prevention and Treatment Act, adoption opportunities, crisis nurseries, missing children's assistance, family support centers, certain activities under the Victims of Child Abuse Act, and Family Unification under the Housing Act.)

Senate amendment

No provision.

Conference agreement

The provision requiring the Secretary of HHS to submit, within 90 days of enactment, a legislative proposal providing necessary technical and conforming amendments was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

The agreement also repeals Title IV–E of the Social Security Act and section 13712 of the Omnibus Budget Reconciliation Act of 1993, and makes a conforming amendment to section 9442(4) of the Omnibus Budget Reconciliation Act of 1986. Additional repeals and technical amendments are described below.

3. CONTINUED APPLICATION OF CURRENT STANDARDS UNDER MEDICAID PROGRAM

Present law

Children for whom Federal foster care payments are made are deemed to be "dependent children" for purposes of Medicaid eligibility.

House bill

Conforms Medicaid coverage of this title with title I of the House bill. In general, the Medicaid provision is designed to ensure that individuals who receive Medicaid coverage under current law will continue to be covered after passage of H.R.4. Here is a summary of Medicaid provision from title I: "An individual who on enactment was receiving AFDC, was eligible for medical assistance under the State plan under this title, and would be eligible to receive aid or assistance under a State plan approved under part A of title IV but for the prohibition on grant funds being used to provide assistance to noncitizens, minor unwed mothers or their children, or children born to families already on welfare, would continue to be eligible for Medicaid. Families leaving welfare for work would also continue to receive the 1-year Medicaid transition benefit."

Senate amendment

No provision.

Conference agreement

See Medicaid Section.

4. EFFECTIVE DATE

Present law

No provision.

House bill

Unless otherwise indicated in particular sections of the bill, the amendments and repeals made by this title take effect on October 1, 1995. The amendments shall not apply with respect to powers, duties, functions, rights, claims, penalties, or obligations applicable to aid or services provided before the effective date, or to administrative actions and proceedings commenced, or authorized to be commenced, before the effective date.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, and also provides a transition rule that allows States to continue current programs under Titles IV–B and IV–E of the Social Security Act until June 30, 1996, and provides for a corresponding reduction in the payment made to such States from the new program created by this legislation. The agreement also contains provisions related to the closing out of accounts for programs that are ended or substantially modified.

5. SENSE OF THE CONGRESS REGARDING TIMELY ADOPTION OF CHILDREN

Present law

No provision.

House bill

It is the sense of the Congress that:

(1) too many adoptable children are spending too much time in foster care;

(2) States must increase the number of waiting children being adopted in a timely manner;

(3) Studies have shown that States would save significant amounts of money if they offered incentives to families to adopt special needs children who would otherwise require foster care;

(4) States should allocate sufficient funds for adoption and medical assistance to encourage families to adopt children who are languishing in foster care;

(5) States should offer incentives for families that adopt special needs children to make adoption more affordable for middle-income families;

(6) States should strive to provide children removed from their biological parents with a single foster care placement and case team and to conclude an adoption of the child, when adoption is the goal, within one year of the child's placement in foster care; and

(7) States should participate in programs to enable maximum visibility of waiting children to potential parents, including a nationwide computer network to disseminate information on children eligible for adoption.

Senate amendment

Title VIII of the Senate amendment addresses adoption issues. See Section 13, below.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

6. CHILD ABUSE PREVENTION AND TREATMENT; GENERAL PROGRAM

A. REFERENCE

Present law

No provision.

House bill

No provision.

Senate amendment

Provides that, unless otherwise indicated, any amendments or repeals should be considered to apply to the Child Abuse Prevention and Treatment Act (CAPTA).

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. FINDINGS

Present law

Section 2 of CAPTA contains findings with regard to the scope of child abuse and neglect, the need for a comprehensive approach to address child abuse and neglect, various goals with regard to national policy, and the appropriate Federal role in this area.

House bill

No provision.

Senate amendment

Amends section 2 to update findings with regard to the scope of child abuse and neglect and to make minor changes, including change of references from "child protection" to "child and family protection."

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

C. OFFICE OF CHILD ABUSE AND NEGLECT

Present law

Section 101 of CAPTA requires the Secretary of HHS to establish a National Center on Child Abuse and Neglect.

House bill

No provision.

Senate amendment

Amends section 101 to allow the Secretary of HHS to establish an Office on Child Abuse and Neglect which would be responsible for executing and coordinating the functions and activities authorized by CAPTA. Repeals current mandate for a National Center on Child Abuse and Neglect.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

D. ADVISORY BOARD ON CHILD ABUSE AND NEGLECT

Present law

Section 102 of CAPTA requires the Secretary to appoint a U.S. Advisory Board on Child Abuse and Neglect, and specifies the composition and duties of the board.

House bill

No provision.

Senate amendment

Amends section 102 by repealing current mandate for a U.S. Advisory Board on Child Abuse and Neglect, and instead allows the Secretary of HHS to appoint an advisory board to make recommendations concerning child abuse and neglect issues. Duties of the new board would include making recommendations on coordination of Federal, State and local child abuse and neglect activities with similar activities regarding family violence at those levels; specific modifications needed in Federal and State laws to reduce the number of unfounded or unsubstantiated cases of child maltreatment; and modifications needed to facilitate coordinated data collection with respect to child protection and child welfare.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

E. REPEAL OF INTERAGENCY TASK FORCE

Present law

Section 103 of CAPTA requires the Secretary to establish an Interagency Task Force on Child Abuse and Neglect.

House bill

No provision.

Senate amendment

Repeals section 103 of CAPTA.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

F. NATIONAL CLEARINGHOUSE FOR INFORMATION RELATING TO CHILD ABUSE AND NEGLECT

Present law

Section 104 of CAPTA requires the Secretary to establish a national clearinghouse for information relating to child abuse and neglect.

House bill

No provision.

Senate amendment

Amends section 104 to retain authorization for a national information clearinghouse on child abuse and neglect, and expands the duties of the clearinghouse to include collecting data on false and unsubstantiated reports and deaths resulting from child abuse and neglect, and, through a national data collection and analysis program, to collect and make available State child abuse and neglect reporting information which, to the extent practical, is universal and case specific, and integrated with other case-based foster care and adoption data collected by HHS.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

G. RESEARCH, EVALUATION AND ASSISTANCE ACTIVITIES

Present law

Section 105 of CAPTA authorizes the Secretary, through the National Center, to conduct research and technical assistance related to child abuse and neglect.

House bill

Authorizes appropriations of $10 million annually for the Secretary to conduct research and training related to child welfare. (See Item 1.H., above).

Senate amendment

Amends section 105 to restructure the research activities function of the Secretary of HHS by deleting references to the National Center and by requiring research on additional issues, including substantiated and unsubstantiated reported child abuse cases. Authorizes technical assistance to include evaluation or identification of: various methods for investigation, assessment, and prosecution of child physical and sexual abuse cases; ways to mitigate psychological trauma to child victims; and effective programs carried out under CAPTA. Allows the Secretary of HHS to provide for dissemination of information related to various training resources available at the State and local levels. Continues authorization for a formal peer review process which utilizes scientifically valid review criteria.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

H. GRANTS FOR DEMONSTRATION PROGRAMS

Present law

Section 106 of CAPTA authorizes the Secretary to make grants to public agencies and private nonprofit organizations for demonstration or service programs or projects, that must include an evaluation component; resource centers; and discretionary grants that may be used for a variety of purposes.

House bill

No provision.

Senate amendment

Amends section 106 to retain authority for the demonstration grants program and to change the criteria for awarding grants. Authorizes the following purposes for demonstration programs and projects: training programs, mutual support and self-help programs for parents, innovative programs that use collaborative partnerships between various agencies to allow for establishment of a triage system in responding to child abuse and neglect reports; kinship care programs, and supervised visitation centers for families where there has been child abuse or domestic violence. All demonstration projects will be evaluated for their effectiveness.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

I. STATE GRANTS FOR PREVENTION AND TREATMENT PROGRAMS

Present law

Section 107 of CAPTA authorizes the Secretary to make development and operation grants to States to assist them in improving their child protective service systems. States must meet certain eligibility requirements, which include having a State law in effect providing for reporting of child abuse or neglect allegations and providing immunity from prosecution for reporters of abuse or neglect.

Requires that States have in place procedures for responding to reports of medical neglect, including instances of withholding medically indicated treatment from disabled infants with life-threatening conditions.

House bill

States would receive Child Protection Block Grants, which would be used for child protective service systems, among other related activities. To receive block grants, States must certify that they have in effect a State law for reporting of child abuse or neglect, a program to investigate child abuse and neglect reports, and procedures to respond to reporting of medical neglect of disabled infants among other requirements. (See Item 1.B. (2) and (3), above.)

Requires States participating in the Child Protection Block Grant to submit detailed annual data reports to the Secretary. (See Item 1.G.2., above.) The Secretary would prepare annual reports for Congress. (See Item 1.G.4., above.)

Senate amendment

Revises section 107. Under revised eligibility requirements, States would provide an assurance or certification, signed by the chief executive officer of the State, that the State has a law or statewide program relating to procedures for: reporting of known and suspected instances of child abuse and neglect; immediate screening, safety assessment, and prompt investigation of such reports; procedures for immediate steps to be taken to protect the safety of children; provisions for immunity from prosecution for individuals making good faith reports of child abuse; methods for preserving confidentiality of records; requirements for the prompt disclosure of relevant information to appropriate entities working to protect children; the cooperation of law enforcement officials, court personnel and human services agencies; provision for the appointment of a guardian ad litem to represent the child in any judicial proceedings; and provisions that facilitate the prompt expungement of unsubstantiated or false child abuse reports.

Requires that States have in place procedures for responding to reports of medical neglect, including instances of withholding medically indicated treatment from disabled infants with life-threatening conditions.

States must have in place, within two years of enactment, provisions by which individuals who disagree with an official finding of abuse or neglect can appeal such a finding.

States would submit a plan every 5 years, instead of 4, demonstrating their eligibility and specifics about how their grant money will be used.

States would be required to work annually with the Secretary to provide, to the maximum extent practicable, a report containing specified data on their child protective service systems, including the number of children reported as abused or neglected, data on substantiation of reports, services provided to reported children, preventive services provided to families, the number of child deaths resulting from abuse or neglect including the number of children who died while in foster care, number of caseworkers responsible for intake and screening, agency response time to abuse or neglect reports, response time with respect to provision of services to families where abuse or neglect has been alleged, and the number of caseworkers relative to the number of reports investigated in the previous year. The Secretary would prepare a report based on State data, to be submitted to Congress and the national information clearinghouse on child abuse and neglect.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

J. REPEAL

Present law

Section 108 of CAPTA authorizes the Secretary to provide training and technical assistance to States.

House bill

No provision.

Senate amendment

Repeals section 108.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

K. MISCELLANEOUS REQUIREMENTS

Present law

Section 110(c) of CAPTA requires the Secretary to ensure that a majority share of assistance under CAPTA is available for discretionary research and demonstration grants.

House bill

No provision.

Senate amendment

Strikes section 110(c).

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

L. DEFINITIONS

Present law

Section 113 of CAPTA contains definitions.

House bill

No provision.

Senate amendment

Amends section 113 to change some definitions. Strikes definitions of "Board" and "Center," and changes the definition of "child abuse and neglect" to mean, at a minimum, "any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm."

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

M. AUTHORIZATION OF APPROPRIATIONS

Present law

Section 114(a) authorizes appropriations for Title I of CAPTA, and specifies how funds are to be allocated among authorized activities. The authorization of appropriations expires at the end of fiscal year 1995.

House bill

The House bill has no funding for CAPTA but includes funding for the Child Protection Block Grant; see sections C.1. and C.2., above.

Senate amendment

Amends section 114(a) to authorize $100 million in fiscal year 1996, and "such sums as necessary" in fiscal years 1997–2000, for Title I of CAPTA. Requires that one-third of funds be spent on discretionary activities and, that of funds reserved for discretionary activities, no more than 40 percent shall be for demonstration projects under section 106.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

N. RULE OF CONSTRUCTION

Present law

No provision.

House bill

No directly comparable provision, but see section 1.B.4., above.

Senate amendment

Establishes a new section of CAPTA that addresses the issue of spiritual treatment of children. The section does not require a parent or legal guardian to provide a child with medical service or treatment, against his or her religious beliefs, nor does it require a State to find, or prohibit a State from finding, abuse or neglect in cases where the parent or guardian relied solely or partially on spiritual means rather than medical treatment, in accordance with their religious beliefs. The section requires a State to have in place authority under State law to pursue any legal remedies necessary to provide medical care or treatment when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life-threatening conditions. Each State has sole discretion over its case-by-case determinations relating to medical neglect.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

O. TECHNICAL AMENDMENT

Present law

No provision.

House bill

No provision.

Senate amendment

Makes a technical amendment to section 1404A of the Victims of Crime Act.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

7. COMMUNITY-BASED FAMILY RESOURCE AND SUPPORT GRANTS

Present law

Title II of CAPTA authorizes the Secretary to make grants to States for Community-Based Family Resource Programs.

House bill

No provision.

Senate amendment

Replaces current law with a new Title II to establish Community-Based Family Resource and Support Grants.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

A. PURPOSE AND AUTHORITY

Present law

No provision.

House bill

States could use Child Protection Block Grant allotments for family resource and support services. (See Item 1.C.(5), above.)

Senate amendment

Establishes the purpose of Title II as: to support State efforts to develop, operate, expand and enhance a network of community-based, prevention-focused, family resource and support programs. Authorizes the Secretary of HHS to make grants on a formula basis to entities designated by States as "lead entities."

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. ELIGIBILITY

Present law

No provision.

House bill

No provision.

Senate amendment

Establishes eligibility requirements for States to receive grants. States are eligible if:

(1) the chief executive officer has designated a lead entity that is an existing public, quasi-public or nonprofit private entity, with priority for the State trust fund advisory board or an existing entity that leverages funds for a broad range of child abuse and neglect prevention activities and family resource programs;

(2) the chief executive officer assures that the lead entity will provide or be responsible for providing a network of community-based family resource and support programs and providing direction and oversight to the network; and

(3) the chief executive officer assures that the lead entity has a demonstrated commitment to parental participation, a demonstrated ability to work with State and community-based public and private nonprofit organizations, the capacity to provide operational support and training and technical assistance to the statewide network of community-based family resource

and support programs, and will integrate its efforts with experienced individuals and organizations.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

C. AMOUNT OF GRANT

Present law

No provision.

House bill

No provision.

Senate amendment

Reserves 1 percent of appropriations for Title II of CAPTA for allotments to Indian tribes and tribal organizations and migrant programs. Remaining funds are allotted to States equally according to the State "minor child amount" and the State "matchable amount." The State minor child amount is based on the State's relative population of children under 18, except that no State can receive less than $250,000. The State matching amount is based each State's relative amount of funds (including foundation, corporate and other private funding, State revenues and Federal funds) that have been dedicated toward the purposes of this program.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

D. EXISTING AND CONTINUATION GRANTS

Present law

No provision.

House bill

No provision.

Senate amendment

Provides that any State or entity that has a grant, contract, or cooperative agreement in effective on the date of enactment, under the Family Resource and Support Program, the Community–Based Family Resource Program, the Family Support Center Program, the Emergency Child Abuse Prevention Grant Program, or the Temporary Child Care and Crisis Nurseries Program, shall continue to be funded under the original terms through the end of the applicable grant cycle. Also allows the Secretary to continue grants for Family Resource and Support Program grantees and other programs funded under CAPTA on a non-competitive basis, subject to available appropriations, grantee performance, and receipt of required reports.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

E. APPLICATION

Present law

No provision.

House bill

No provision.

Senate amendment

Provides that, to receive grants under Title II, States must submit an application to the Secretary containing information requested by the Secretary, including:

(1) a description of the lead entity;

(2) a description of how the network of community-based, prevention-focused, family resource and support programs will operate, and how family resource and support services will be integrated into a continuum of preventive services for children and families;

(3) an assurance that an inventory of current family resource programs, respite, child abuse and neglect prevention activities, and other family resource programs in the State, and a description of current unmet needs, will be provided;

(4) a budget for the State's network of community-based, prevention-focused, family resource and support programs that verifies that the State will spend an amount equal to no less than 20 percent of the amount received under this program (in cash, not in-kind);

(5) an assurance that funds received under this Title will supplement and not supplant other State and local public funds designated for the statewide network of family resource and support programs;

(6) an assurance that the statewide network of family resource and support programs will maintain cultural diversity, and be culturally competent and socially sensitive and responsive to the needs of families with children with disabilities;

(7) an assurance that the State has the capacity to ensure meaningful involvement of parents;

(8) a description of the criteria to be used to develop, or select and fund, individual programs to be part of the statewide network;

(9) a description of outreach activities that will be used to maximize the participation of racial and ethnic minorities, new immigrant populations, children and adults with disabilities, homeless families and those at risk of homelessness, and members of other under-served or under-represented groups;

(10) a plan for providing operational support, training and technical assistance to family resource and support programs;

(11) a description of how activities will be evaluated;

(12) a description of actions that will be taken to advocate changes in State policies, practices, procedures, and regulations to improve the delivery of family resource and support program services to all children and families; and

(13) an assurance that reports will be submitted to the Secretary on time and containing requested information.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

F. LOCAL PROGRAM REQUIREMENTS

Present law

No provision.

House bill

No provision.

Senate amendment

Grants will be used for family resource and support programs that:

(1) assess community assets and needs through a planning process that includes parents, local agencies, and private sector representatives;

(2) develop a strategy to provide a continuum of preventive, holistic, family-centered services to children and families;

(3) provide "core" services, such as parent education, support and self-help, and leadership services, developmental screening of children, outreach, referral and follow-up services; "other core" services, which can be provided directly or through contracts, including respite services; and access to "optional" services, including child care, early childhood development and intervention, services for families with children with disabilities, job readiness, educational services, self-sufficiency and life management skills training, community referral services, and peer counseling

(4) develop leadership roles for the meaningful involvement of parents;

(5) provide leadership in mobilizing local resources to support family resource and support programs; and

(6) participate with other community-based, prevention-focused family resource and support programs in developing and operating the statewide network.

Priority for local grants shall be given to community-based programs serving low-income communities and those serving young parents or parents with young children, and to family resource and support programs previously funded under the programs consolidated by this Title.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

G. PERFORMANCE MEASURES

Present law

No provision.

House bill

No provision.

Senate amendment

States receiving grants must submit reports to the Secretary that:

(1) demonstrate effective development of a statewide network of family resource and support programs;

(2) supply an inventory and description of services provided to families, including "core" and "optional" services;

(3) demonstrate the establishment of new respite and other new family services, and expansion of existing services, to meet identified unmet needs;

(4) describe number of families served (including families with children with disabilities), and the involvement of a diverse representation of families in designing, operating and evaluating the statewide network of family resource and support programs;

(5) demonstrate a high level of satisfaction among families that have used family resource and support program services;

(6) demonstrate innovative funding mechanisms that blend Federal, State, local and private funds, and innovative and interdisciplinary service delivery mechanisms;

(7) describe the results of a peer review process conducted under the State program; and

(8) demonstrate an implementation plan to ensure continued leadership of parents in family resource and support programs.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

H. NATIONAL NETWORK FOR COMMUNITY-BASED FAMILY RESOURCE PROGRAMS

Present law

No provision.

House bill

No provision.

Senate amendment

Authorizes the Secretary to allocate such sums as necessary from the amount provided under the State allotment to support State activities related to a peer review process, an information clearinghouse, a yearly symposium, a computerized communication system between State lead entities, and State-to-State technical assistance through biannual conferences.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

I. DEFINITIONS

Present law

No provision.

House bill

No provision.

Senate amendment

Defines the following terms: "children with disabilities," "community referral services," "culturally competent," "family resource and support program," "national network for community-based family resource programs," "outreach services," and "respite services."

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

J. AUTHORIZATION OF APPROPRIATIONS

Present law

No provision.

House bill

No provision.

Senate amendment

Authorizes $108 million for Title II for each of fiscal year 1996–fiscal year 2000.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

8. REPEALS

Present law

No provision.

House bill

Repeals the crisis nurseries portion of Temporary Child Care and Crisis Nurseries; and family support centers under the Stewart B. McKinney Homeless Assistance Act. (See Item 2, above.)

Senate amendment

Repeals the Temporary Child Care for Children with Disabilities and Crisis Nurseries Act. Also repeals family support centers under Subtitle F of Title VII of the Stewart B. McKinney Homeless Assistance Act.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

9. FAMILY VIOLENCE PREVENTION AND SERVICES

A. STATE DEMONSTRATION GRANTS

Present law

No provision.

House bill

No provision.

Senate amendment

Amends section 303(e) of the Family Violence Prevention and Services Act, relating to non-Federal matching requirements.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. ALLOTMENTS

Present law

No provision.

House bill

No provision.

Senate amendment

Amends section 304(a)(1) of Family Violence Prevention and Services Act.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

C. AUTHORIZATION OF APPROPRIATIONS

Present law

Section 310 of the Family Violence Prevention and Services Act authorizes appropriations for the program and specifies how funds are to be allocated among activities.

House bill

No provision.

Senate amendment

Amends section 310 of Family Violence Prevention and Services Act to reduce from 80% to 70% the minimum amount of funds to be used for making grants to States for family violence activities. Also requires the Secretary to use not less than 10% of appropriations for grants for State family violence coalitions, and provides that Federal funds made available under this program must be used to supplement and not supplant other Federal, State or local public funds expended for similar activities.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

10. ADOPTION OPPORTUNITIES; REFERENCE

A. FINDINGS AND PURPOSE

Present law

Section 201 of the adoption opportunities program establishes congressional findings with regard to the child welfare population, and declares the program's purpose to facilitate the elimination of barriers to adoption and to provide permanent homes for children who would benefit from adoption, particularly children with special needs.

House bill

Repeals the Adoption Opportunities Program. (See Item 2, above.)

Senate amendment

Amends section 201 of the adoption opportunities program to update congressional findings, and delete references to the promotion of model adoption legislation and procedures.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. INFORMATION AND SERVICES

Present law

No provision.

House bill

No provision.

Senate amendment

Amends section 203 of the adoption opportunities program, to require the Secretary of HHS to conduct studies related to kinship care, recruitment of foster and adoptive parents; and to provide technical assistance and resource and referral information related to termination of parental rights, recruitment and retention of adoptive placements, placement of special needs children, provision of pre- and post-placement services, and other assistance to help State and local governments replicate successful adoption-related projects.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

C. AUTHORIZATION OF APPROPRIATIONS

Present law

No provision.

House bill

No provision.

Senate amendment

Authorizes $20 million for fiscal year 1996, and such sums as necessary for each of fiscal year 1997–FY2000, for the adoption opportunities program.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

11. ABANDONED INFANTS ASSISTANCE ACT

Present law

No provision.

House bill

Repeals abandoned infants assistance.

Senate amendment

Authorizes $35 million for each of fiscal year 1995–FY1996, and such sums as necessary for each of fiscal year 1997–FY2000, for abandoned infants assistance.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

12. REAUTHORIZATION OF VARIOUS PROGRAMS

A. MISSING CHILDREN'S ASSISTANCE ACT

Present law

The Missing Children's Assistance Act is authorized through fiscal year 1996.

House bill

Repeals the Missing Children's Assistance Act (see Item 2, above; however, authorizes appropriations of $7 million for the Attorney General to operate an information clearinghouse and telephone hotline for information on missing children (see Item 1.F, above).

Senate amendment

Extends the authorization for the Missing Children's Assistance Act through fiscal year 1997; such sums as necessary are authorized. Provides that the Department of Justice shall use no more than 5 percent of appropriations in a fiscal year to evaluate the program.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. VICTIMS OF CHILD ABUSE ACT OF 1990

Present law

Appropriations are authorized through fiscal year 1996 for grants to improve investigation and prosecution of child abuse cases, and for children's advocacy centers, under the Victims of Child Abuse Act.

House bill

Repeals grants to improve investigation and prosecution of child abuse and neglect cases, and children's advocacy centers, under the Victims of Child Abuse Act. (See Item 2, above.)

Senate amendment

Extends the authorization through fiscal year 1997, at such sums as necessary, for these two programs under the Victims of Child Abuse Act.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

13. ADOPTION EXPENSES

A. REFUNDABLE CREDIT FOR ADOPTION EXPENSES

Present law

No provision.

House bill

No provision in H.R. 4, but similar provision in the House-passed H.R. 1215.

Senate amendment

Amends subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, to insert a new section 35, adoption expenses, that would provide a tax credit for expenditures for adoption fees, court costs, attorney fees, and other expenses directly related to a legal and finalized adoption. This dollar-for-dollar tax credit of up to $5,000 per child is reduced for taxpayers with adjusted gross income above $60,000 and is fully phased out at incomes of $100,000. Married couples must file a joint return and the credit is not available for expenditures that contradict State or Federal law. The amendment prohibits double benefits. The amendment will apply to taxable years beginning after Dec. 31, 1995.

Conference agreement

[This provision has been moved to the tax portion of the Reconciliation Act of 1995 and will provide a tax credit for expenditures for adoption fees, court costs, attorney fees, and other expenses directly related to a legal and finalized adoption. This dollar-for-dollar tax credit of up to $5,000 per child is reduced for taxpayers with adjusted gross income above $75,000 and is fully phased out at incomes of $115,000. The credit is not available for expenditures that contradict State or Federal law. The amendment prohibits double benefits with respect to State and local credits, except in cases of "special children". The amendment will apply to taxable years beginning after Dec. 31, 1995 and allow for carry over of up to five years in the event tax liability does not cover the entire credit during a single year.]

B. EXCLUSION OF ADOPTION ASSISTANCE

Present law

No provision.

House bill

No provision.

Senate amendment

Amends part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 by inserting a new section 137, which treats as a tax-free fringe benefit employer-provided adoption assistance benefits, or reimbursement by the employer of qualified adoption expenses, provided the adoptee is physically or mentally incapable of self-care (a "special needs" child). Military adoption assistance benefits for these children also would be free of tax. The amendment will apply to taxable years beginning after Dec. 31, 1995.

Conference agreement

[This provision has been moved to the tax portion of the Reconciliation Act of 1995. This provision treats as a tax-free fringe benefit employer-provided adoption assistance benefits of up to $5,000, or reimbursement by the employer of qualified adoption expenses. The amendment will apply to taxable years beginning after Dec. 31, 1995. This benefit is not available if the credit (above) is chosen.]

C. WITHDRAWAL FROM IRA FOR ADOPTION EXPENSES

Present law

No provision.

House bill

No provision.

Senate amendment

Amends subsection (d) of section 408 of the Internal Revenue Code of 1986 to permit tax-free withdrawals from an individual retirement account (IRA) for qualified adoption expenses.

Conference agreement

The Senate recedes.

SUBTITLE H—CHILD CARE

1. GOALS

Present law

No provision.

House bill

Adds the following goals:

(1) to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State;

(2) to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

(3) to encourage States to provide consumer education information to help parents make informed choices about child care;

(4) to assist States to provide child care to parents trying to achieve independence from public assistance; and

(5) to assist States in implementing the health, safety, licensing and registration standards established in State regulation.

Senate amendment

No provision.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

2. AUTHORIZATION OF APPROPRIATIONS

Present law

The authorization of appropriations expires at the end of fiscal year 1995. Appropriations in fiscal year 1995 are $935 million; such sums as necessary are authorized. [Sec. 658B of the CCDBG Act]

[Note: In addition, entitlement funds are available for child care under the AFDC Child Care, Transitional Child Care, and At-Risk Child Care programs authorized by Title IV–A of the Social Security Act.]

House bill

Authorizes appropriations of $2,093 million for each of fiscal year 1996–2000.

[Note: Title I of the House bill repeals the AFDC Child Care, Transitional Child Care, and At-Risk Child Care programs.]

Senate amendment

Authorizes appropriations as follows: $1 billion for fiscal year 1996, and such sums as may be necessary for each of fiscal year 1997–2000.

[Note: Additional funds are provided for child care under Title I of the Senate amendment, to replace the current AFDC Child Care, Transitional Child Care, and At-Risk Child Care programs—$8 billion over 5 years in direct spending.]

Conference agreement

The conference agreement establishes a single child care block grant and State administrative system by adding mandatory funds to the existing Child Care and Development Block Grant (CCDBG). Specifically, one discretionary and two mandatory streams of funding will be consolidated in a reconstituted CCDBG.

The child care funds made available in the Child Care Block Grant total $17 billion over 7 years; $10 billion in mandatory funds ($1.17 billion in fiscal year 1996, $1.24 billion in fiscal year 1997, $1.32 billion in fiscal year 1998, $1.4 billion fiscal year 1999, $1.5 billion in fiscal year 2000, $1.625 billion in fiscal year 2001, and $1.745 in fiscal year 2002) combined with $1 billion each year (fiscal year 1996–2002) in discretionary funds.

Each State will receive the amount of funds it received for child care under all of the entitlement programs currently under title IV of the Social Security Act (AFDC Child Care, transitional Child Care, and At-Risk Child Care) in the 1994 fiscal year, or the average amount of funds received for those programs from fiscal year 1992 through fiscal year 1994, which ever is greater. These programs, combined, provide approximately $990 million in mandatory child care funding for the States.

The mandatory funds remaining after the State allocations based on previous years child care allotments will be distributed among the States based on the formula currently used in the title IV–A At-Risk Child Care grant. Specifically, funds will be distributed based on the proportion of the number of children under the age of 13 residing in the State to the number of all of the nation's children under the age of 13. States must provide matching funds in the amount of the fiscal year 1995 State Medicaid rate to receive these funds.

Discretionary funds appropriated for the Child Care Block Grant will be distributed to States based on the current formula for the Child Care and Development Block Grant. This formula utilizes the number of children in low income families and the State per capita income as criteria for the distribution of funds to States. As in current law governing the CCDBG, there is no requirement for the State to provide matching funds to receive an allotment from the discretionary funds appropriated for the Child Care Block Grant.

If a State does not use their full portion of funds, the remaining portion will be redistributed to the states according to section 402(i) (as such section was in effect before October 1, 1995).

For the first year of enactment, States will receive their total allotment (mandatory and discretionary) for child care less any amount States had already spent on Title IV of Social Security child care programs in fiscal year 1996 on the day before enactment.

3. LEAD AGENCY

Present law

Requires the chief executive officer of a State to designate an appropriate State agency to act as the lead agency in administering financial assistance under the Act. [Sec. 658D of the CCDBG Act]

House bill

Changes the term "agency" to "entity."

Senate amendment

Allows the State lead agency to administer financial assistance received under the Act through other "governmental or nongovernmental" agencies (instead of other "State" agencies); requires that "sufficient time and Statewide distribution of the notice" be given of the public hearing on development of the State plan; and strikes language on issues that may be considered during consultation with local governments on development of the State plan.

Conference agreement

The House recedes.

4. APPLICATION AND PLAN

Present law

Requires States to prepare and submit to the Secretary an application that includes a State plan. The initial plan must cover a 3-year period, and subsequent plans must cover a 2-year period. Required contents of the plan include designation of a lead agency; policies and procedures regarding parental choice of providers, unlimited parental access, parental complaints, consumer education, compliance with State and local regulatory requirements, establishment of and compliance with health and safety requirements, review of State licensing and regulatory requirements, and supplementation.

In addition, the State plan must provide that funds will be used for child care services, and that 25% of funds will be reserved for activities to improve the quality of child care and to increase the availability of early childhood development and before- and after-school child care. [Sec. 658E of the CCDBG Act]

Further, State plans must assure that payment rates will be adequate to provide eligible children equal access to child care as compared with children whose families are not eligible for subsidies, and must assure that the State will establish and periodically revise a sliding fee scale that provides for cost sharing by families that receive child care subsidies.

House bill

Requires the State plan to cover a 2-year period. Requires States to provide a detailed description of procedures to be used to assure parental choice of providers. Changes "provide assurances" to "certify" that procedures are in effect within the State to ensure unlimited parental access to children and parental choice; also requires that the State plan provide a detailed description of such procedures. Changes "provide assurances" to "certify" that the State maintains a record of parental complaints, and requires the State to provide a detailed description of how such a record is maintained and made available. Changes the consumer education part of the State plan to require assurances that the State will collect and disseminate consumer education information. Requires that the State certify that providers comply with State and local health, safety and licensing or regulatory requirements and provide a detailed description of such requirements and how they are enforced. Eliminates current law provisions requiring establishment of and compliance with health and safety requirements, review of State licensing and regulatory requirements, notification to HHS when standards are reduced, and supplementation. Eliminates the requirement that unlicensed providers be registered.

Adds a requirement that a summary of the facts relied upon by the State to determine that payment rates are sufficient to ensure equal access to child care is included in the State plan. Eliminates the assurance that the State will establish a sliding fee scale. Also provides that funds, other than amounts transferred under section 658T (see Item 14, below), will be used for child care services, activities to improve the quality and availability of such services, and any other activity that the State deems appropriate to realize the goals specified above (see Item 1). Deletes the current law requirement that States reserve 25% of funds for activities to improve the quality of child care and to increase availability of early childhood development and before- and after-school care.

Requires States to spend no more than 5% on administrative costs.

Senate amendment

Requires the State plan to cover a 2-year period. Replaces the requirement that providers not subject to licensing or regulation be registered with the State, with a requirement that the State implement mechanisms to ensure proper payment to providers. Requires the Secretary to develop minimum standards for Indian tribes and tribal organizations receiving assistance under the Act, in lieu of State or local licensing or regulatory requirements. Eliminates provisions related to reduction in standards and reviews of State licensing and regulatory requirements.

Requires the State plan to describe the manner in which services will be provided to the working poor. Reserves 15% of each State's allotment for activities to improve quality of child care, instead of 25% for both quality improvement and before- and after-school child care services.

Requires States to spend no more than 5% on administrative costs, not including direct service costs. Administrative costs shall not include direct service costs.

Conference agreement

The Senate recedes, with a modification that the States must certify that they have licensing standards for child care which are applied uniformly without regard to whether a child care provider is receiving Federal funds. Nothing in this Act shall either require or prohibit the application of State licensing standards, regulations, or laws to a particular type of child care or child care provider. The Secretary must develop minimum standards for Indian tribes and tribal organizations receiving assistance under this Act, in lieu of State or local licensing or regulatory requirements. at least 70% of the mandatory funding must be used to provide child care for children in families who are receiving welfare, working their way off welfare, or at risk of becoming welfare dependent. A substantial portion of the discretionary funding for child care authorized under this Act is intended to be used for low-income working families who are not working their way off welfare or at risk of becoming welfare dependent. The State plan must demonstrate how the State is meeting the specific needs of each of these populations.

5. LIMITATION ON STATE ALLOTMENTS

Present law

Prohibits the use of funds for purchase or improvement of land or buildings, except in the case of sectarian agencies or organizations that need to make renovations or repairs in order to comply with specific health and safety requirements that States are required to establish. [Sec. 658F of the CCDBG Act]

House bill

Amends section 658F to make a conforming amendment referring to the elimination of specific health and safety requirements.

Senate amendment

No provision (maintains current law).

Conference agreement

The Senate recedes, with a modification that this Act prohibit the use of funds for purchase or improvement of land or buildings except for Indian tribes or tribal organizations. Indian tribes and tribal organizations may use funds for construction or renovation of facilities, upon the request by the tribe or tribal organization and subject to the approval by the Secretary.

6. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE

Present law

As stated above, 25% of State allotments must be reserved for activities to improve child care quality and to increase the availability of early childhood development and before- and after-school child care (see Item 1.D, above). Section 658G specifies how these funds are to be used. Of reserved funds, requires States to use no less than 20% for activities to improve the quality of care, including resource and referral programs, grants or loans to assist providers in meeting State and local standards, monitoring of compliance with licensing and regulatory requirements, training of child care personnel, and improving compensation for child care personnel. [Sec. 658G of the CCDBG Act]

House bill

Repeals the requirement that 25% of funds be set aside for quality improvement activities (see Item 5, above). Repeals section 658G regarding the use of these set-aside funds.

Senate amendment

As stated above, reduces quality improvement set-aside to 15% (see Item 5, above). Amends section 658G to require States to use their quality improvement set-aside for resource and referral activities, including "providing comprehensive consumer education to parents and the public, referrals that honor parental choice, and activities designed to improve the quality and availability of child care," and for one or more "other activities," which include those listed in the current section 658G, plus activities to increase the availability of before- and after-school care, infant care, and child care between the hours of 5:00 p.m. and 8:00 a.m.

Adds new language to prohibit States from discriminating against providers that wish to participate in resource and referral systems, that are operating legally within the State but that are exempt from State licensing requirements.

Conference agreement

The Senate recedes, with a modification that States retain at least a 3% set-aside of the total mandatory and discretionary funding received for child care under this Act for activities designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care, such as resource and referral services.

The House recedes, with a modification to limit the amount of total child care funds made available under this Act for administrative costs to 3%. Administrative cost shall not include direct service costs.

7. EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL CARE

Present law

Requires States to use no less than 75% of funds reserved for quality improvement for activities to expand and conduct early childhood development programs and before- and after-school child care. [Sec. 658H of the CCDBG Act]

House bill

Repeals section 658H.

Senate amendment

Repeals section 658H.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

8. ADMINISTRATION AND ENFORCEMENT

Present law

Requires the Secretary of Health and Human Services (HHS) to coordinate HHS and other Federal child care activities, to collect and publish a list of State child care standards every 3 years, and to provide technical assistance to States. Requires the Secretary to review, monitor, and enforce compliance with the Act and the State plan by withholding payments and imposing additional sanctions in certain cases. [Sec. 658I of the CCDBG Act]

House bill

Deletes the requirement that the Secretary of HHS collect and publish a list of child care standards every 3 years. Maintains current law for repayment.

Senate amendment

Strikes the current law requirement that the Secretary withhold further payments to a State in case of a finding of noncompliance until the noncompliance is corrected. Instead, authorizes the Secretary, in such cases, to impose additional program requirements on the State, such as a requirement that the State reimburse the Secretary for any improperly spent funds, or the Secretary may deduct from the administrative portion of the State's subsequent allotment an amount equal to or less than the misspent funds, or a combination of such options. The amendment also strikes sections related to additional sanctions and notice of such additional sanctions.

Conference agreement

The House recedes, with a modification that the Secretary may not impose additional program requirements on the State for an improperly spent funds.

9. PAYMENTS

Present law

Provides that payments received by a State for a fiscal year may be expended in that fiscal year or in the succeeding 3 fiscal years. [Sec. 658J of the CCDBG Act]

House bill

Provides that payments received by a State for a fiscal year may be obligated in the fiscal year received or the succeeding fiscal year, instead of expended in the fiscal year received or the succeeding 3 fiscal years.

Senate amendment

No provision (maintains current law).

Conference agreement

The Senate recedes.

10. ANNUAL REPORT AND AUDITS

Present law

Requires each State to prepare and submit to the Secretary every year a report: specifying how funds are used; containing data on the manner in which the child care needs of families in the State are being fulfilled, including information on the number of children served, child care programs in the State, compensation provided to child care staff, and activities to encourage public-private partnerships in child care; describing the extent to which affordability and availability of child care has increased; summarizing findings from a review of State licensing and regulatory requirements, if applicable; explaining any action taken by the State to reduce standards, if applicable; and describing standards and health and safety requirements applied to child care providers in the State, including a description of efforts to improve the quality of child care. [Sec. 658K of the CCDBG Act]

House bill

Changes the title of the section from "Annual Report and Audits" to "Annual Report, Evaluation Plans, and Audits." Changes required data elements in annual reports to include:

(1) the number and ages of children being assisted with funds provided under this subchapter;

(2) with respect to the families of such children:

the number of other children in such families;

the number of such families that include only 1 parent;

the number of such families that include both parents;

the ages of the mothers of such children;

the ages of the fathers of such children;

the sources of the economic resources of such families, including the amount of such resources obtained from (and separately identified as being from)

a. employment, including self-employment;

b. assistance received under part A of title IV of the Social Security Act (SSA);

c. part B of title IV of the SSA;

d. the Child Nutrition Act of 1966;

e. the National School Lunch Act;

f. assistance received under title XVI of the SSA;

g. assistance received under title XIV of the SSA;

h. assistance received under title XIX of the SSA;

i. assistance received under title XX of the SSA; and

j. any other source of economic resources the Secretary determines to be appropriate;

(3) the number of such providers separately identified with respect to each type of child care provider specified in section 658P(5) that provided child care services obtained with assistance provided under this subchapter;

(4) the cost of child care services and the portion of such cost paid with assistance from this Act;

(5) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;

(6) the number of parental complaints about child care that were found to have merit and a description of corrective actions taken by the State; and

(7) information on programs to which funds were transferred under section 658T (see item 15, below).

States are also required to present evidence demonstrating that they have State requirements designed to protect the health and safety of children.

Deletes current report requirements on: 1) increasing the affordability and availability of child care; 2) reviewing findings on State licensing and regulatory requirements; and 3) reducing standards.

Requires States to include an evaluation plan in their first annual report due after enactment and every 2 years thereafter, and to include the results of such evaluation in the second annual report due after enactment and every 2 years thereafter. The plan must include an evaluation regarding the extent to which the State has realized the following goals:

(1) promoting parental choice to make their own decisions on the child care that best suits their family's needs;

(2) providing consumer education information to help parents make informed choices about child care;

(3) providing child care to parents trying to achieve independence from public assistance; and

(4) implementing the health, safety, licensing, and registration standards established in State regulations.

Senate amendment

Requires States to submit reports every 2 years, rather than every year, with the first report due no later than December 31, 1996. Requires that States include information on the type of Federal child care and preschool programs serving children in the State, and requires that States describe the extent and manner to which resource and referral activities are being carried out by the

State. Strikes the current requirement for information on the type and number of child care programs, providers, caregivers and support personnel in the State, and strikes the provision related to review findings of State licensing and regulatory requirements.

Conference agreement

The Senate recedes, with a modification that the State prepare and submit a data report to the Secretary every six months, and that the report include: (1) family income; (2) county of residence; (3) the sex, age of children receiving benefits; (4) whether the family includes only one parent; (5) the sources of family income, including the amount obtained from (and separately identified as being from): a) employment, including self-employment; b) Part A cash assistance or other assistance; c) housing assistance; d) food stamps; and e) other; (6) the number of months the family has received benefits; (7) the type of care in which the child was enrolled (family day care, center, own home); (8) whether the provider was a relative; (9) the cost of care; and (10) the average hours per week of care. Annually, the State must submit the following aggregate data: (1) the number of providers separately identified in accord with each type of provider specified in section 658P(5) that received funding under this subchapter; (2) the monthly cost of child care services and the portion of such cost paid with assistance from this Act by type of care; (3) the number and total amount of payments by the State in vouchers, contracts, cash, and disregards from public benefit programs by type of care; (4) the manner in which consumer education information was provided; (5) information on programs from which funds were transferred under 658T; and (6) total number (unduplicated) of children and families served.

States are required to present evidence demonstrating that they have State requirements designed to protect the health and safety of children.

The House recedes on the requirement that States include an evaluation plan in their reports to the Secretary.

Deletes current report requirements on: (1) increasing the affordability and availability of child care; (2) reviewing findings on State licensing and regulatry reauirements; and (3) reducing standards.

11. REPORT BY THE SECRETARY

Present law

Requires the Secretary to prepare and submit an annual report, summarizing and analyzing information provided by States, to the House Education and Labor Committee and the Senate Labor and Human Resources Committee. This report must contain an assessment and, where appropriate, recommendations to Congress regarding efforts that should be taken to improve access of the public to quality and affordable child care. [Sec. 658L of the CCDBG Act]

House bill

Revises the Secretary's report to become a biennial report to the Speaker and the President pro tempore.

Senate amendment

Requires the Secretary to prepare and submit biennial reports, rather than annual, with the first report due no later than July 31, 1997; and replaces the reference to the House Education and Labor Committee with the House Economic and Educational Opportunities Committee.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

12. ALLOTMENTS

Present law

Requires the Secretary to reserve one-half of 1% of appropriations for payment to Guam, American Samoa, the Virgin Islands, the Northern Marianas and the Trust Territory of the Pacific Islands. The Secretary also must reserve no more than 3% for payment to Indian tribes and tribal organizations with approved applications. Remaining funds are allocated to the States based on the States' proportion of children under age 5 and the number of children receiving free or reduced-price school lunches, as well as the States' per capita income. Any portion of a State's reallotment that the Secretary determines is not needed by the State to carry out its plan for the allotment period, must be reallotted by the Secretary to the other States in the same proportion as the original allotments. [Sec. 658O of the CCDBG Act]

House bill

Maintains the current law set-asides for the Territories and Indian tribes and tribal organizations, except that the Trust Territory of the Pacific Islands is deleted from the set-aside for Territories. Allots remaining funds to States as follows: each State will receive an amount based on its relative share of the aggregate amount of Federal funds received by the State in fiscal year 1994 under the Child Care and Development Block Grant Act, and under child care programs for AFDC recipients and former AFDC recipients and the At-Risk Child Care program under Title IV–A of the Social Security Act. Eliminates reallotment provisions.

Senate amendment

Maintains current law allotment procedures. Amends section 658O(c), related to payments for the benefit of Indian children, to add new provisions allowing the use of funds by Indian tribes or tribal organizations for construction or renovation of facilities, upon request by the tribe or tribal organization and subject to approval by the Secretary. The Secretary may not permit a tribe or tribal organization to use funds for construction or renovation if such use will result in a decrease in the level of child care services. The Secretary is also allowed to reallot to other tribes any tribal allotments that are not expended, which is similar to what happens with unused State allotments.

Conference agreement

The Senate recedes, with a modification that the set-aside for Indian tribes and tribal organizations and Native Hawaiian Organizations is 1% of the total funds for child care made available under this Act. Any portion of a State's allotment that the Secretary determines is not needed by the State to carry out its plan for the allotment period must be reallotted by the Secretary to the other States in the same proportion as the original allotments. The Secretary is also allowed to reallot to other tribes any tribal allotments that are expended, which is similar to the process for reallotment to States.

13. DEFINITIONS

Present law

Provides definitions of the following terms: caregiver, child care certificate, elementary school, eligible child, eligible child care provider, family child care provider, Indian tribe, lead agency, parent, secondary school, Secretary, sliding fee scale, State, and tribal organization. [Sec. 658P of the CCDBG Act]

House bill

Includes definitions for lead entity and child care services, and strikes definitions for elementary school, secondary school, and sliding fee scale.

Senate amendment

Revises the definition of eligible child to one whose family income does not exceed 100% of the State median, instead of 75%.

Adds the following as an allowable use of a child care certificate: "as a deposit for child care services if such a deposit is required of other children being cared for by the provider."

Revise the definition of relative child care provider by adding great grandchild and sibling (if the provider lives in a separate residence) to the list of eligible children; by striking the requirement that such providers be registered; and by requiring such providers to comply with any "applicable" requirements governing child care provided by a relative.

Conference agreement

The House recedes, with a modification that strikes the definition for elementary and secondary school and revises the definition of eligible child to one whose family income does not exceed 85% of the State median income.

14. TRANSFER OF FUNDS

Present law

No provision.

House bill

Adds a new section 658T to the CCDBG Act, allowing a State to transfer no more than 20% of CCDBG funds to one or more of the following programs:

1. Part A of Title IV of the Social Security Act;
2. Part B of Title IV of the Social Security Act;
3. Child Nutrition Act of 1966;
4. National School Lunch Act; and
5. Title XX of the Social Security Act.

Transferred funds would be subject to the rules of the program to which they are transferred.

Senate amendment

States can transfer up to 30% of their cash assistance block grant (title IV–A) into the CCDBG.

Conference agreement

The House recedes, no funds can be transfered out of the Child Care and Development Block Grant.

15. APPLICATION TO OTHER PROGRAMS

Present law

No provision.

House bill

No provision.

Senate amendment

Adds a new section 658T to the CCDBG Act, that requires States that use any Federal funds for child care services to ensure that such services meet the requirements, standards and criteria, with the exception of the 15% quality set-aside, of the CCDBG and any regulations issued under the CCDBG. These funds must be administered through a uniform State plan and, to the maximum extent practicable, shall be transferred to the lead agency and integrated into the CCDBG program.

Conference agreement

The Senate recedes.

16. REPEALS AND TECHNICAL AND CONFORMING AMENDMENTS

Present law

Not applicable.

House bill

Repeals the following programs:

(1) Child Development Associate (CDA) Scholarship Assistance;

(2) State Dependent Care Development Grants;

(3) Programs of National Significance under Title X of the Elementary and Secondary Education Assistance Act of 1965 (child care related to Cultural Partnerships for At-Risk Children and Youth, and Urban and Rural Education Assistance); and

(4) Native-Hawaiian Family-Based Education Centers.

[Note: Title I of the House bill also repeals child care assistance provided under current law by Title IV–A of the Social Security Act. This assistance is provided under 3 programs known as AFDC Child Care, Transitional Child Care, and At-Risk Child Care.]

Senate amendment

Repeals CDA Scholarship Assistance and State Dependent Care Development Grants.

Requires the Secretary of HHS, after consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget, to prepare and submit to Congress, within 6 months after enactment, a legislative proposal containing technical and conforming amendments that reflect the amendments and repeals made by this Act.

[Note: Title I of the Senate amendment also earmarks and provides additional funds for child care, to replace the AFDC Child Care, Transitional Child Care, and At-Risk Child Care programs.]

Conference agreement

These repeals were dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

SUBTITLE I—CHILD NUTRITION

1. CHILD NUTRITION ACT OF 1966

Present law

Authorizes the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the School Breakfast program, the Special Milk program, assistance to States for child nutrition administrative expenses and nutrition education and training, and school breakfast assistance for Defense Department overseas dependents' schools.

The *WIC program* provides specific nutritious foods to lower-income pregnant, postpartum, and breastfeeding women, and infants and children (up to age 5). Recipients' family income must be below 185% of Federal poverty guidelines, and they must be judged at nutritional risk. Federal funds, set by appropriation levels, are made available to State health agencies under a formula. States then provide funds to local health agencies, which are responsible for day-to-day operations. Funds also are used for food, nutrition assessments and counselling, referrals to other programs, breastfeeding promotion, and a farmers' market program. [Sec. 17 and 21 of the Child Nutrition Act]

Under the *School Breakfast program,* schools choosing to participate in the program receive per-meal Federal cash subsidies for all breakfasts they serve that meet Federal nutrition standards. Subsidies are indexed annually for inflation and differ depending on whether the meal is served free (to children from families with income below 130% of poverty), at a reduced price (to children with family income between 130% and 185% of poverty), or at "full price" (so-called "paid" meals for those with family income above 185% of poverty or who do not apply for free or reduced-price meals). Schools with high proportions of lower-income students get larger per-meal subsidies, and special grants are provided to assist in paying start-up and expansion costs. [Sec. 4 of the Child Nutrition Act]

Under the *Special Milk program*, schools and institutions not otherwise participating in a meal service program (and schools with split sessions for kindergartners) provide milk to all children at a low price or free, and each half-pint served is federally subsidized at a different rate—depending on whether it is served free or not. Provision of free milk is not required. [Sec. 3 of the Child Nutrition Act]

Under the *State administrative expense assistance program,* grants are made to States to help cover administrative costs associated with child nutrition programs. The amount available each year is 1.5% of Federal cash payments for School Lunch, School Breakfast, Child and Adult Care Food, and Special Milk programs. [Sec. 7 of the Child Nutrition Act]

For *nutrition education and training,* States are provided with Federal funds for training school food service personnel in food service management, instructing teachers in nutrition education, and teaching children about nutrition. [Sec. 19 of the Child Nutrition Act]

Special provisions are made for Federal assistance for school breakfast programs in *Defense Department overseas dependents' schools.* [Sec. 20 of the Child Nutrition Act]

House bill

Retains the designation of the Act as the Child Nutrition Act of 1966 and replaces the Act's current provisions with authorization for a Family Nutrition Block Grant Program.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment to:

A. Create an optional State block grant entitled, ***"CHILD CARE AND SUMMER FOOD SERVICE OPTIONAL BLOCK GRANT."***

OPTIONAL BLOCK GRANT—Under the terms of the optional block grant, all States have the option of receiving funds for the Child Care Food and Summer Food Programs through a block grant. For fiscal year 1996, 22 States will have the option to participate. In fiscal year 1997, all States will have the option to participate.

DECISION TO PARTICIPATE—States opting to participate in the block grant may reverse a decision to participate in the block grant once prior to the termination date and only after a two-year period of participation. If a State opts out, such State may resume participation under the summer food service program and the child care food program.

STATE PLAN—States are required to submit a State plan to the Secretary in order to participate in the block grant.

USE OF FUNDS—States must insure that the funds will only be used to provide assistance in providing meals and meal supplements in summer food service facilities and nonresidential child care institutions that are licensed or approved by the Federal Government, the State, or a local government (State option to make payments to sponsoring organizations).

ADMINISTRATIVE EXPENSES—None of the funds under the block grant are to be used for State administrative expenses (States will continue to receive such funds under current SAE provisions).

NUTRITIONAL REQUIREMENTS—States are to provide minimum nutritional requirements for meals and meal supplements based on the most recent tested nutritional research available. Such requirements shall, to the extent practicable, be consistent with the goals of the most recent Dietary Guidelines for Americans. Meals shall provide, on the average over a week, at least ⅓ of the recommended dietary allowance for lunches and dinners and ¼ of the recommended dietary allowance for breakfasts. The Secretary may not impose any additional nutritional requirements beyond those specified in this section.

STATE REVIEW—States will review the meal operations in each participating summer food service facility and nonresidential child care institution no later than two years after implementation of the block grant and at the end of each 5-year period thereafter.

INCOME ELIGIBILITY—The State plan will describe how the block grant will serve specific groups of children in the State. The plan will further describe the income eligibility limitations established for meal and meal supplements. Only children who are members of families with incomes below 185 percent of the poverty line are eligible to participate.

SUMMER FOOD ELIGIBILITY—A summer food service facility may only receive funds if it operates in an area where at least 50 percent of the children are eligible for free or reduce price school meals—or be a residential public or nonprofit private summer camp. Existing summer food service sponsors must be given an opportunity to continue participation.

DOD PARTICIPATION—Nonresidential child care institutions on military installations are eligible to participate on an equitable basis with all other nonresidential child care institutions in the State participating in the block grant. If such facility is licensed or approved by DOD, the State may not require them to be licensed or approved under State or local law.

PRIVACY—States shall provide for safeguarding and restricting the use and disclosure of information about children receiving assistance under this Act. Physical segregation and overt identification of children participating in the block grant is prohibited.

REQUIRED REPORT—In order to participate, States must agree to submit a report to the Secretary each fiscal year describing (a) the number of children receiving assistance; (b) the different types of assistance provided; (c) the extent to which assistance was effective in achieving program goals; (d) the standards and methods used to ensure the nutritional quality of meals and meal supplements and (e) other information the Secretary may reasonably require. Failure to submit the required report will reduce the amounts otherwise payable to a State.

COMPLIANCE—The Secretary is required to review and monitor State compliance and withhold funds to the State with respect to the program or activity for which noncompliance is found, until the Secretary determines the problem has been corrected. The Secretary may seek financial restitution for misused funds.

PAYMENTS TO STATES—Payments to States under the block grant shall be on a quarterly basis and may be expended by the State for the current fiscal year or the succeeding fiscal year.

AUDITS—A yearly audit is required.

ALLOTMENT—In the first year of participation, the Secretary is required to allot to each participating State an amount that is equal to the amount the Secretary projects will be made available to the State to carry out the current law summer food service program and the child care food program for the current fiscal year. In the succeeding years such amount will be adjusted to reflect changes in the Consumer Price Index, series for food away from home and changes in each State's child population.

ALTERNATIVE ASSISTANCE—The Secretary is to arrange for the provision of such assistance and reduce the State allotment accordingly in cases where a State prohibited by law from providing assistance to an eligible sponsoring organization or a DOD domestic dependents' school, as well as States that have substantially failed or are unwilling to provide such assistance.

EVALUATION—No later than three years after the establishment of the block grant the Secretary is to conduct an evaluation and submit a report to Congress, including the comments of the Comptroller General. The report is to include information on the effects of the block grant on the nutritional quality of meals; the income distribution of children served, the difference between implementation of the block grant and implementation of the existing Summer Food program and Child Care Food program.

AUTHORIZATION PERIOD—the block grant option is authorized through September 30, 2002.

B. Streamlining provisions in the Child Nutrition Act of 1966. The following changes are intended to streamline the operation of programs under the Child Nutrition Act.

56. Revise Sec. 19(f)(1)(A), striking clauses (ix)–(xix), eliminating unnecessary stipulations on uses of funds.

57. Strike Sec. 19(f)(1)(B) to eliminate "language appropriate" information provision.

58. Strike Sec. 19(f)(2) and 19(f)(4). Technical and conforming.

63. Revise Sec. 19(i), making discretionary and authorizing appropriations of $10 million per year.

2. AUTHORIZATION FOR FAMILY NUTRITION BLOCK GRANT

A. REQUIREMENT FOR GRANTS

Present law

The Child Nutrition Act (see item 1) and the National School Lunch Act (see item 11) require that the Secretary of Agriculture provide Federal assistance to States for the WIC, Child and Adult Care Food, Summer Food Service, and Special Milk programs, as well as other support (e.g., for State administrative expenses and nutrition education and training), under terms of agreements with States meeting Federal standards.

House bill

Directs the Secretary of Agriculture to provide to each State that submits an annual application in accordance with the revised Child Nutrition Act's requirements (see item 4) an annual family nutrition grant for the purpose of achieving the goals of the Family Nutrition Block Grant Program (see item 2B for the program's goals and item 3 for State allotments).

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional State block grant and making changes to Child Nutrition Act (see Item #1).

B. GOALS

Present law

The Child Nutrition Act declares it the policy of Congress to extend, expand, and strengthen child nutrition programs as a measure to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of agricultural commodities by assisting States through grants and other means to more effectively meet children's nutritional needs. [Sec. 2 of the Child Nutrition Act]

House bill

Establishes the goals of the Family Nutrition Block Grant Program:

(1) to provide nutritional risk assessments, food assistance based on the assessments, and nutrition education and counseling to economically disadvantaged pregnant, postpartum, and breastfeeding women, as well as infants and young children, determined to be at nutritional risk (see item 10 for definitions);

(2) to provide nutritional risk assessments of participating women so that food assistance and nutrition education is provided that meets their specific needs;

(3) to provide nutrition education to participating women to increase their awareness of the foods needed for good health;

(4) to provide food assistance, including nutritious supplements, to participating women in order to reduce the incidence of low-birthweight babies and babies born with birth defects because of nutritional deficiencies;

(5) to provide food assistance, including nutritious supplements, to participating women, infants, and children to ensure their future good health;

(6) to ensure that participating women, infants, and children are referred to other health services, including routine pediatric/obstetric care;

(7) to ensure that children from economically disadvantaged families in day care facilities, family day care homes, homeless shelters, settlement houses, recreational centers, Head Start centers, Even Start programs, and facilities for disabled children receive nutritious meals, supplements, and low-cost milk; (see item 10B for definition of "economically disadvantaged"); and

(8) to provide summer food service programs for children from economically disadvantaged families when school is not in session (see item 10B for definition of "economically disadvantaged").

Senate amendment

No provision.

Conference agreement

Senate recedes, deleting all references to the Special Supplemental Food Program for Women, Infants and Children.

C. TIMING OF PAYMENTS

Present law

No provision.

House bill

Directs that the Secretary of Agriculture make family nutrition grant payments to the States on a quarterly basis.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to the Child Nutrition Act (see Item #1).

3. ALLOTMENT OF FAMILY NUTRITION BLOCK GRANT

Present law

Current activities that may be funded under the House bill's Family Nutrition Block Grant include those now supported by the WIC program, the Homeless Children Nutrition program (authorized under section 17B of the National School Lunch Act), the Child and Adult Care Food program (authorized under section 17 of the National School Lunch Act), the Summer Food Service program (authorized under section 13 of the National School Lunch Act), and the Special Milk program.

Under the *WIC program*, Federal funds, determined by appropriations levels, are made available to States under a formula that reflects State caseloads, food cost inflation, need (as evidenced by poverty and health indices), and a specified national average per participant grant; in effect, funds are allotted so that each State can maintain its caseload from year to year, and extra money is shared so as to support expanded enrollment in States with greater need.

Under the *Homeless Children Nutrition program*, Federal funds are made available to existing projects to continue operations and, from any additional amounts, money is provided for new projects or to expand existing projects.

Under the *Child and Adult Care Food program*, child and adult care centers and family day care homes receive Federal reimbursements for each meal or supplement served at legislatively established, inflation indexed rates.

Under the *Summer Food Service program*, sponsors receive Federal reimbursements for each meal or supplement served, at legislatively established, inflation indexed rates.

Under the *Special Milk program*, schools and other participating institutions receive specified, inflation indexed Federal reimbursements for each half-pint of milk served.

House bill

As set forth below, provides for the Secretary of Agriculture to make State allotments of funds appropriated for the Family Nutrition Block Grant.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to child Nutrition Act (see Item #1).

A. FIRST YEAR STATE ALLOTMENTS

Present law

No provisions.

House bill

For the first fiscal year in which grants are made, provides that the Secretary make allotments to States based on the projections of funds each State would receive under current law for the upcoming fiscal year.

Base-Year State Shares: Each State's allotment would be its prior-year share of funds received under the WIC and Homeless Children Nutrition programs, plus its prior-year share of 87.5% of the amounts received under the Child and Adult Care Food, Summer Food Service, and Special Milk programs.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

B. SECOND YEAR STATE ALLOTMENTS

Present law

No provision.

House bill

For the second fiscal year in which grants are made, provides that (1) 95% of the amount appropriated be allotted according to each State's share of the amount allotted in the first year and (2) 5% of the amount allotted be based on each State's share of the number of individuals receiving assistance under the grant during the 1-year period ending the preceding June 30.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

C. THIRD AND FOURTH YEAR STATE ALLOTMENTS

Present law

No provision.

House bill

For the third and fourth fiscal years in which grants are made, provides that (1) 90% of the amount appropriated be allotted according to each State's share of the amount allotted in the preceding year and (2) 10% of the amount allotted be based on each State's share of the number of individuals receiving assistance under the grant during the 1-year period ending the preceding June 30.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment allowing an optional family nutrition block grant for summer food and child care food programs only and making changes to the Child Nutrition Act (see Item #1).

D. FIFTH YEAR STATE ALLOTMENTS

Present law

No provision.

House bill

For the fifth fiscal year in which grants are made, provides that (1) 85% of the amount appropriated be allotted according to each State's share of the amount allotted in the fourth year and (2) 15% of the amount allotted be based on each State's share of the number of individuals receiving assistance under the grant during the 1-year period ending the preceding June 30.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment allowing an optional family nutrition block grant for summer food and child care food programs only (see Item #1).

4. APPLICATION FOR FAMILY NUTRITION GRANTS

Present law

Nutrition requirements for food assistance provided under the current WIC, Child and Adult Care Food, and Summer Food Service programs are established by the Secretary of Agriculture, as are the general standards for determining nutritional risk in women, infants, and children, on the basis of tested nutritional research. [Sec. 17(b)(8) & (14) and (f)(12) of the Child Nutrition Act; Sec. 17(g)(1) and Sec. 13(f) of the National School Lunch Act]

The use/disclosure of information obtained from applications for free/reduced-price meals is limited to those administering/enforcing child nutrition programs, administrators of other health or education programs (with restrictions), and the General Accounting Office and law enforcement officials. [Sec. 9(b)(2) of the National School Lunch Act]

House bill

Provides that the Secretary make a family nutrition grant to a State if it submits an application containing only the following:

(1) an agreement that the State will use the grant in accordance with Family Nutrition Block Grant program requirements (see item 5);

(2) an agreement that the State will set minimum nutrition requirements for food assistance provided under the grant based on the most recent tested nutrition research available (but the requirements may not prohibit the substitution of foods to accommodate medical or other special dietary needs, and would have to be based, at a minimum, on the weekly average nutrient content of school lunches or other standards set by the State);

(3) an agreement that, with respect to assistance to pregnant, postpartum, and breastfeeding women, and infants and children, the State will implement minimum nutrition requirements based on the most recent tested nutritional research available or the model nutrition standards developed by the National Academy of Sciences (see item 8B);

(4) an agreement that the State will take reasonable steps it deems necessary to restrict the use and disclosure of information about those receiving assistance under the grant;

(5) an agreement that the State will not use more than 5% of its grant for administrative costs incurred to provide assistance (costs associated with nutritional risk assessments of pregnant, postpartum, and breastfeeding women, and infants and children, as well as those associated with nutrition education and counseling for these individuals, would not be considered administrative costs subject to the 5% limit); and

(6) an agreement that the State will submit an annual report to the Secretary (see item 6).

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

5. USE OF AMOUNTS PROVIDED UNDER THE FAMILY NUTRITION BLOCK GRANT

A. ACTIVITIES SUPPORTED

Present law

The *WIC program* provides nutritional risk assessment, specific nutritious foods (under Federal guidelines), nutrition education/counseling, breastfeeding support, and a farmers' market program for lower-income pregnant, postpartum, and breastfeeding women, as well as infants and children (up to age 5). Recipients' family income must be below 185% of poverty, and they must be judged at nutritional risk. [Sec. 17 of the Child Nutrition Act]

The *Special Milk program* provides Federal reimbursement for each half-pint of milk served in schools and other child care institutions not participating in a meal service program (and schools with split sessions for kindergartners). Milk is served at a low price or for free and each half-pint is subsidized at a different rate depending on whether it served free or not. Provision of free milk is not required. [Sec. 3 of the Child Nutrition Act]

The *Child and Adult Care Food program* provides Federal per-meal/supplement reimbursements for all meals and supplements served in public and private nonprofit child care centers, public and private nonprofit adult day care centers, certain for-profit child and adult day care centers, and family day care homes. Reimbursements for meals/supplements served in child/adult care centers differ according to whether they are served free (to children from families with income below 130% of Federal poverty guidelines), at a reduced price (to children with family income between 130% and 185% of the poverty guidelines), or at "full price" (so-called "paid" meals and supplements for those with family income above 185% of poverty or who do not apply for free or reduced price meals/supplements). Reimbursements for meals and supplements served in family day care homes do not vary by the family income of the child, and sponsors of family day care homes receive monthly payments for administrative costs. [Sec. 17 of the National School Lunch Act]

The *Summer Food Service program* provides Federal per meal/ supplement reimbursements for all summer meals and supplements served through public and private nonprofit sponsors (including schools and local governments) to children in areas where 50% or more have family income below 185% of the Federal poverty guidelines (are eligible for free or reduced-price school meals). Summer food service subsidies also are provided to public and private nonprofit summer camps and higher education institutions in the National Youth Sports program. [Sec. 13 of the National School Lunch Act]

The *Homeless Children Nutrition program* grants funds to public and private nonprofit sponsors providing food service (meals and supplements), similar to that provided under the Child and Adult Care Food program, to homeless children under age 6 in shelters. [Sec. 17B of the National School Lunch Act] [General Note: In addition to cash reimbursements, Federal commodity assistance is available for the Child and Adult Care Food and Summer Food Service programs.]

House bill

Provides that the Secretary of Agriculture make family nutrition grants to States if they agree to use their grant to:

(1) provide nutritional risk assessment, food assistance based on the assessment, and nutrition education and counseling to economically disadvantaged pregnant, postpartum, and breastfeeding women, and infants and young children, who are determined to be at nutritional risk (see item 10 for definitions);

(2) provide milk in nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar child care settings to children from economically disadvantaged families (see item 10 for definitions) [Note: Under the School-Based Nutrition Block Grant Program, support could be provided for milk served in schools.];

(3) provide food service in institutions and family day care homes providing child care to children from economically disadvantaged families (see item 10 for definitions) [Note: Under the School-Based Nutrition Block Grant Program, support could be provided for child care food service provided through schools. Further Note: Adult-care food service would not be funded under the Family Nutrition Block Grant program.];

(4) provide summer food service to economically disadvantaged children through programs carried out by nonprofit food authorities, local governments, higher education institutions in the National Youth Sports program, and nonprofit summer camps (see item 10 for definitions) [Note: Under the School-Based Nutrition Block Grant Program, support could be provided for summer food service by schools.]; and

(5) provide nutritious meals to pre-school-age homeless children in shelters and other facilities serving the homeless.

[General Note: Federal commodity assistance would not be available for child care food and summer food service activities under the family nutrition grant.]

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

B. ADDITIONAL REQUIREMENTS FOR ASSISTANCE FOR WOMEN, INFANTS, AND CHILDREN

Present law

Under the WIC program, States must carry out cost containment measures in procuring infant formula (and, where practicable, other foods). Cost containment must be by competitive bidding (selection of a single source offering the lowest price) or another method that yields equal or greater savings. Cost savings (e.g., through manufacturer rebates) may be used by the State for WIC program purposes. The Secretary of Agriculture must provide technical assistance for cost-containment bids and offer to solicit multi-State bids for infant formula and infant cereal. In addition, certain rules against bid-rigging and anti-competitive practices are established. [Sec. 17(b) (17)–(20) and (h) (8) & (9) of the Child Nutrition Act, and Sec. 25 of the National School Lunch Act]

House bill

Requires that each State ensure that not less than 80% of its family nutrition grant is used to provide nutrition risk assessment, food assistance based on the assessment, and nutrition education and counseling to economically disadvantaged pregnant women, postpartum women, breastfeeding women, infants, and young children.

With respect to assistance provided to women, infants, and young children, requires States to establish and carry out a cost containment system for procuring infant formula. Requires States to use cost containment savings for any of the activities supported under their family nutrition grant. Requires States to submit annual reports to the Secretary (1) describing their infant formula cost containment system and (2) estimating the cost savings from the system for the report year compared to savings from the preceding year, where appropriate.

Requires States to ensure that equitable assistance for economically disadvantaged pregnant women, postpartum women, breastfeeding women, infants, and young children is provided to members of the Armed Forces and their dependents, regardless of their State of residence (see item 10 for definitions).

Senate amendment

Includes findings on the success of the WIC program in improving the health status of women, infants, and children and saving Medicaid expenditures, as well as the importance of manufacturer rebates in helping to fund the WIC program. Provides that it is the sense of the Senate that any legislation not eliminate or in any way weaken present competitive bidding requirements for the purchase of infant formula in programs supported with Federal funds.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

C. CHILD CARE FOOD ASSISTANCE ON MILITARY INSTALLATIONS

Present law

Assisted child care facilities must be licensed under Federal, State, or local rules. [Sec. 17(a)(1) of the National School Lunch Act]

House bill

Requires States to provide equitable assistance under its program for child care facilities to Defense Department child care programs on military installations—to the extent consistent with the number of children in the programs and after consultation with the programs' representatives.

In carrying out programs for child care facilities, bars States from requiring that those on military installations be licensed under State law if they are licensed by the Defense Department.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant (see Item #1).

D. AUTHORITY TO USE FAMILY NUTRITION BLOCK GRANT AMOUNTS FOR OTHER PURPOSES

Present law

No provision.

House bill

Allows States to use not more than 20% of amounts received from a family nutrition block grant for any fiscal year to carry out State programs under other block grants authorized by:

(1) part A of title IV of the Social Security Act (relating to welfare for families with children);

(2) part B of title IV of the Social Security Act (relating to provision of child welfare services);

(3) title XX of the Social Security Act (relating to provision of social services);

(4) the National School Lunch Act (relating to school-based nutrition block grants); and

(5) the Child Care and Development Block Grant.

Provides that States may not transfer funds to other block grants unless the appropriate State agency makes a determination that sufficient amounts will remain available for the fiscal year to carry out activities under the Family Nutrition Block Grant program.

Provides that family nutrition grant amounts States transfer to other block grants (noted above) will not be subject to the requirements of the Family Nutrition Block Grant program under the revised Child Nutrition Act, but will be subject to the requirements that apply to Federal funds provided directly to the block grant to which they are transferred.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant (see Item #1).

6. REPORTS

Present law

No comparable provision.

House bill

Requires that States, as a condition of receiving a family nutrition grant, agree to submit an annual report to the Secretary of Agriculture describing:

(1) the number of individuals receiving assistance under the grant for the reporting (fiscal) year;

(2) the different types of assistance provided;

(3) the extent to which the assistance provided was effective in achieving the goals of the Family Nutrition Block Grant program (see item 2B);

(4) the standards and methods the State is using to ensure the nutritional quality of assistance under the grant;

(5) the number of low-birthweight births in the State in the reporting (fiscal) year compared to the number of low-birthweight births in the previous year; and

(6) any other information that can be reasonably required by the Secretary.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to the Child Nutrition Act (see Item #1).

7. PENALTIES

A. PENALTY FOR VIOLATIONS

Present law

The Child Nutrition and National School Lunch Acts provide penalties for fraud in relation to assistance provided under either Act, grant the Secretary of Agriculture authority to establish and adjust claims against States, and establish a compliance and accountability program to monitor the use of Federal funds. [Sec. 12(g) and Sec. 22 of the National School Lunch Act, and Sec. 16 of the Child Nutrition Act]

House bill

Requires the Secretary of Agriculture to reduce family nutrition grant amounts otherwise payable to a State by any amount paid under the grant that an audit made under the "Single Audit Act" (chapter 75 of title 31 of the United States Code) finds has been used in violation of the revised Child Nutrition Act. However, the Secretary is barred from reducing any quarterly payment to the State by more than 25%.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

B. PENALTY FOR FAILURE TO SUBMIT A REQUIRED REPORT

Present law

No specific provision.

House bill

Requires the Secretary to reduce by 3% the family nutrition grant amount otherwise payable to a State for any fiscal year if the Secretary determines that the State has not submitted the required annual report (see item 6) for the immediately preceding fiscal year within 6 months after the end of that fiscal year.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

8. MODEL NUTRITION STANDARDS FOR FOOD ASSISTANCE FOR WOMEN, INFANTS, AND CHILDREN

A. REQUIREMENT

Present law

No comparable provisions. [Note: The Secretary establishes nutrition standards for and foods to be made available under the WIC program; Sec. 17(b)(14) and 17(f)(12) of the Child Nutrition Act.]

House bill

Not later than April 1, 1996, requires the National Academy of Sciences to develop model nutrition standards for food assistance provided to economically disadvantaged pregnant women, postpartum women, breastfeeding women, infants, and young children under the Family Nutrition Block Grant program (see Item

#10 for definitions). The standards are to be developed by the Food and Nutrition Board of the Academy's Institute of Medicine, in cooperation with pediatricians, obstetricians, nutritionists, and directors of programs providing food assistance, nutrition education and counseling to these women, infants, and children.

The model standards must require that food assistance provided to these women, infants, and children contain nutrients that are lacking in their diets, as determined by nutritional research.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

B. REPORT TO CONGRESS

Present law

No provision.

House bill

Not later than one year after the model nutrition standards (noted above) are developed, requires the National Academy of Sciences to report to Congress regarding efforts of States to implement them.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

9. AUTHORIZATION OF APPROPRIATIONS

A. AUTHORIZATION

Present law

Federal appropriations for activities under current law replaced by the House bill's Family Nutrition Block Grant program are authorized at such sums as are necessary, except for the Homeless Children Nutrition program (provided specific amounts). [Sec. 13(r), 17(b), and 17B of the National School Lunch Act; Sec. 3(a) and 4(a) of the Child Nutrition Act]

House bill

Authorizes appropriations for the Family Nutrition Block Grant program under the revised Child Nutrition Act at: $4.606 billion for fiscal year 1996, $4.777 billion for fiscal year 1997, $4.936 billion for fiscal year 1998, $5.120 billion for fiscal year 1999, and $5.308 billion for fiscal year 2000.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

B. AVAILABILITY

Present law

With the exception of funding for the WIC program, appropriations for the activities under current law to be replaced by the Family Nutrition Block Grant program generally cannot be carried over to the next fiscal year.

House bill

Authorizes amounts for the Family Nutrition Block Grant program to remain available until the end of the fiscal year subsequent to the year they were appropriated for.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

10. DEFINITIONS

A. BREASTFEEDING WOMEN, INFANTS, POSTPARTUM WOMEN, PREGNANT WOMEN, AND YOUNG CHILDREN

Present law

For purposes of the WIC program: (1) breastfeeding women are defined as women up to 1 year postpartum who are breastfeeding their infants; (2) infants are defined as persons under 1 year of age; (3) postpartum women are defined as women up to 6 months after termination of pregnancy; (4) pregnant women are defined as those who have 1 or more fetuses in utero; and (5) young children are persons who have had their first birthday but not attained their fifth birthday. [Sec. 17(b) of the Child Nutrition Act]

House bill

For purposes of State family nutrition grant programs, adopts present-law definitions of breastfeeding women, infants, postpartum women, pregnant women, and young children.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

B. ECONOMICALLY DISADVANTAGED

Present law

No directly comparable provisions. [Note: Under present law, means tests for assistance apply as follows: (1) for the WIC program, recipients must have family income below 185% of the Federal poverty guidelines (but States may not set standards below poverty); and (2) for those in child and adult care centers under the Child and Adult Care Food program, persons with family income below 130% of poverty are eligible for free meals/supplements, those with family income between 130% and 185% of poverty are eligible for reduced-price meals and supplements, and those with family income above 185% of poverty (or who do not apply for free or reduced-price treatment) are eligible for "paid" (but still subsidized) meals and supplements. No individual income test is applied in the family day care home component of the Child and Adult Care Food program, the Summer Food Service program, the Special Milk program, and the Homeless Children Nutrition program.

House bill

The term "economically disadvantaged" is defined to apply to individuals or families with annual income below 185% of the Federal poverty guidelines. [Note: No assistance under a family nutrition grant (other than aid to homeless children) could be given to those with family income above 185% of poverty.]

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

C. SCHOOL AND SECRETARY

Present law

"Schools" are defined as public or private nonprofit elementary, intermediate, or secondary schools. The "Secretary" is defined as the Secretary of Agriculture.

House bill

"Schools" and the "Secretary" would, under the Family Nutrition Block Grant program, have the same meaning as in present law.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

D. STATE

Present law

In general, "State" is defined as the 50 States, the District of Columbia, Puerto Rico, the Northern Marianas, American Samoa, Guam, and the Virgin Islands. In the WIC program, it includes an Indian tribe, band, or group recognized by the Interior Department, an intertribal council or group recognized by the Interior Department, or the Indian Health Service.

House bill

"State" would, under the Family Nutrition Block Grant program have the same meaning as in present law. In addition, Indian tribal organizations (as defined under section 4(l) of the Indian Self-Determination and Education Assistance Act) would be included as States and could apply for grants.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to Child Nutrition Act (see Item #1).

11. NATIONAL SCHOOL LUNCH ACT

Present law

Authorizes the School Lunch, Summer Food Service, Child and Adult Care Food, and Homeless Children Nutrition programs. Also authorizes commodity assistance for child nutrition programs and school lunch assistance for Defense Department overseas dependents' schools.

Under the School Lunch program, schools choosing to participate receive per-meal Federal subsidies for all lunches they serve that meet Federal nutrition standards. Subsidies are indexed annually and differ depending on whether the meal is served free (to children from families with income below 130% of Federal poverty guidelines), at a reduced price (to children with family income between 130% and 185% of poverty), or at "full price" (so-called "paid" lunches for those with family income above 185% of poverty or who do not apply for free or reduced-price meals). Schools with high proportions of free or reduced-price participants receive an additional per-meal subsidy. [Sec. 4 & 11 of the National School Lunch Act]

The Summer Food Service program provides Federal per-meal/supplement reimbursements for all summer meals and supplements served through public and private nonprofit sponsors (including schools and local governments) to children in areas where 50% or more have family income below 185% of the Federal poverty guidelines (are eligible for free or reduced-price school meals). Summer food service subsidies also are provided to public and private nonprofit summer camps and higher education institutions in the National Youth Sports program. [Sec. 13 of the National School Lunch Act]

The Child and Adult Care Food program provides Federal per-meal reimbursements for all meals and supplements served in public and private nonprofit child care centers, public and private nonprofit adult day care centers, certain for-profit child and adult day care centers, and family day care homes. Reimbursements for meals/supplements in centers vary by the recipient's income, but not in family day care homes. Certain schools with after-school care programs also may receive assistance. [Sec. 17 & 17A of the National School Lunch Act] The Homeless Children Nutrition program grants funds to public and private nonprofit sponsors providing food service (meals and supplements), similar to that provided under the Child and Adult Care Food program, to homeless children under age 6 in shelters.

The Agriculture Department is required to provide commodity support for meals served by institutions in the School Lunch, Child and Adult Care Food, and Summer Food Service programs. Schools and other institutions are "entitled" to a specific dollar value of commodities based on the number of meals served. Schools and other institutions also receive "bonus" commodities donated from Federal stocks at the Agriculture Department's discretion. [Sec. 6 & 14 of the National School Lunch Act]

The Secretary of Agriculture is required to make funds available for school lunch programs in Defense Department overseas dependent's schools to the same degree as for other schools (authority for school breakfast programs in these schools is contained in Sec. 20 of the Child Nutrition Act). [Sec. 17A of the National School Lunch Act]

House bill

Retains the designation of the Act as the National School Lunch Act and replaces the Act's current provisions with authority for a School-Based Nutrition Block Grant Program.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment to:

A. CREATE AN OPTIONAL STATE BLOCK GRANT ENTITLED, "SCHOOL NUTRITION OPTIONAL BLOCK GRANT."

OPTIONAL BLOCK GRANT—Under the terms of the optional block grant, not more than 22 States in fiscal year 1996 and, in succeeding years, all States have the option of receiving funds to carry out programs offering school breakfasts and lunches for all school children under a block grant.

DECISION TO PARTICIPATE—States opting to participate in the block grant may reverse a decision to participate in the block grant once prior to the termination date and only after a two-year period of participation. If a State opts out, such State may resume participation under the school lunch and school breakfast programs and the commodity distribution program.

STATE PLAN—States are required to submit a State plan to the Secretary in order to participate in the block grant.

USE OF FUNDS—Allows States to use funds only for school lunches, breakfasts, and supplements and for the purchase of equipment or improvement of facilities needed to improve school food services.

NONPROFIT OPERATION—School lunch and breakfast programs are to be operated on a nonprofit basis.

ADMINISTRATIVE EXPENSES—None of the funds under the block grant are to be used for State administrative expenses. (States will continue to receive such funds under current SAE provisions).

NUTRITIONAL REQUIREMENTS—States are to provide minimum nutritional requirements for meals based on the most recent tested nutritional research available. Such requirements shall, to the extent practicable, be consistent with the goals of the most recent Dietary Guidelines for Americans. Meals shall provide, on the average over a week, at least $\frac{1}{3}$ of the recommended dietary allowance for lunches and $\frac{1}{4}$ of the recommended dietary allowance for breakfasts. The Secretary may not impose any additional nutritional requirements beyond those specified in this section.

STATE REVIEW—States will review the meal operations in each school food authority participating in the block grant no later than two years after implementation of the block grant and at the end of each 5-year period thereafter.

INCOME ELIGIBILITY—The State plan will describe how the block grant will serve specific groups of children in the State. The plan will further describe the income eligibility limitations established for free meals and, if available, for low-cost meals.

FREE MEALS—State's plan are required to offer access to free meals to students who are members of families with incomes at or below 130 percent of poverty and who attend a school participating in the block grant.

CONTINUED PARTICIPATION—Each school participating in the current school lunch and breakfast program in a State opting for a block grant is to be given opportunity to participate in State program under the block grant.

CASH/CLOC—States are required to permit a school district, nonprofit private school or DOD domestic dependents' school to receive commodity assistance in the same form they received such assistance as of January 1, 1987.

PRIVACY—States shall provide for safeguarding and restricting the use and disclosure of information about children receiving assistance under this Act. Physical segregation and overt identification of children participating in the block grant is prohibited.

REQUIRED REPORT—In order to participate, States must agree to submit a report to the Secretary each fiscal year describing (a) the number of children receiving assistance; (b) the different types of assistance provided; (c) the extent to which assistance was effective in achieving program goals; (d) the standards and methods used to ensure the nutritional quality of meals and meal supplements and (e) other information the Secretary can reasonably require. Failure to submit the required report will cause a 3 percent reduction in amounts otherwise payable to a State.

COMPLIANCE—The Secretary is required to review and monitor State compliance and withhold funds to the State with respect to the program or activity for which noncompliance is found, until the Secretary determines the problem has been corrected. The Secretary may seek financial restitution for misused funds.

PAYMENTS TO STATES—Payments to States under the block grant shall be on a quarterly basis and may be expended by the State for the current fiscal year or the succeeding fiscal year.

AUDITS—A yearly audit is required.

ALLOTMENT—In the first year of participation, the Secretary is required to allot to each participating State an amount that is equal to the amount the Secretary projects will be made available to the State to carry out the school lunch and breakfast programs (including commodities) for the current fiscal year. In succeeding years, the amount will equal the amount provided in the preceding fiscal year, adjusted to reflect changes in the consumer price index, services for food away from home, and changes in each State's student enrollment.

COMMODITIES—Not less than 8 percent and not more than 10 percent of the amount of a State's allotment will be in the form of commodities.

ALTERNATIVE ASSISTANCE—Requires the Secretary to arrange for the provision of assistance and reduce State allotments accordingly, in cases where a State is prohibited by law from providing assistance to a nonprofit private school or a DOD domestic dependents' school or if a State has substantially failed or is unwilling to provide such assistance to a nonprofit private school, a DOD domestic dependents' school or a public school.

TRANSITION—A State taking the block grant option may use funds and commodities from the preceding fiscal year under the school lunch and breakfast program to transition into the block grant and may use block grant funds to transition out of the block grant if the State decides to end participation before the end of the fiscal year.

EVALUATION—No later than three years after the establishment of the block grant the Secretary is to conduct an evaluation and submit a report to Congress, including the comments of the Comptroller General. The report is to include information on the effects of the block grant on the nutritional quality of meals; the degree to which children, particularly low income children participated in the block grant, the income distribution of children served and the amount of assistance such children received; the types of meals offered under the block grant; how the implementation of the block grant differs from the implementation of the school lunch and breakfast programs; the effect of the block grant on state and school administrative costs, the effect of the block grant on paperwork.

AUTHORIZATION PERIOD—the block grant option is authorized through September 30, 2002.

B. STREAMLINE PROVISIONS OF THE NATIONAL SCHOOL LUNCH ACT OF 1966

1. Revise Sec. 6(a)(3), striking provision that allows schools to refuse up to 20% of commodities and the related language and conforming reference to fruit and vegetable refusals not counted towards the 20% maximum.

2. Revise Sec. 6(e)(1(E) to eliminate provisions requiring that not less than 75% of assistance be provided in the form of commodities donated to school lunch programs.

3. Revise Sec. 6(e)(2), substituting the first sentence with "Each State agency shall offer and equitably distribute commodities among schools participating in the school lunch program."

4. Strike Sec. 6(f) allowing commodities to be offered to school breakfasts on a per meal basis.

15. Revise Sec. 11(b), striking references to "maximum per lunch amounts."

30. Revise Sec. 13(a)(1) to eliminate reference to expansion.

34. Revise Sec. 13(b)(2) to provide that service institutions that operate as camps or serve meals primarily to migrant children may serve three meals or two meals and one supplement.

35. In Sec. 13, references to the National Youth Sports Program are amended by (1) striking non summer months payments; (2) striking severe needs reimbursements; and (3) requiring that participants be from low-income areas.

36. Revise Sec. 13(f) by permitting children attending a site on school premises operated directly by the authority to refuse not more than one item of a meal without affecting the amount of payments made to the school.

39. Revise Sec. 13(g)(1)(B) by striking second sentence to eliminate technical assistance for those with difficulty maintaining compliance.

56. Revise Sec. 17 by, in the title of the section, striking "and Adult."

57. Revise Sec. 17(a) to eliminate reference to authorization to "expand" programs.

70. Repeal Section 26.

72. Strike Sec. 18(d)(3)(A),(B),(C) to eliminate the universal free pilot.

73. Revise Sec. 18(e) to make the demonstration project for outside school hours discretionary.

12. AUTHORIZATION FOR SCHOOL–BASED NUTRITION BLOCK GRANT

A. ENTITLEMENT

Present law

States are entitled to "performance-based" funding according to the number and type of meals and supplements served under school-based programs authorized by the National School Lunch and Child Nutrition Acts.

House bill

"Entitles" each State that submits an annual application (see item 14) to receive an annual school-based nutrition grant for the purpose of achieving the goals of the School-Based Nutrition Block Grant Program (see item 12D for the program's goals and item 13 for State entitlement allotments).

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

B. REQUIREMENT TO PROVIDE COMMODITIES

Present law

The Secretary of Agriculture is required to ensure that no less than 12% of the total amount of "entitlement" commodity and cash assistance for the School Lunch program is in the form of commodity support (including cash in lieu of commodities in the limited instances where available and administrative costs for procuring commodities). [Sec. 6(g) of the National School Lunch Act]

House bill

Requires that 9% of the amount of assistance available under the school-based block grant be in the form of commodities.

Senate amendment

No directly comparable provision. [Note: See item 26]

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

C. THE SCHOOL-BASED NUTRITION BLOCK GRANT

Present law

Federal funds for activities under existing law replaced by the House bill's school-based grant are authorized at such sums as are necessary and provided based on the number of meals, supplements, and half-pints of milk served.

The Secretary is required to make school lunch and school breakfast funding and commodities available to Defense Department overseas dependents' schools to the same degree as other schools. [Sec. 20 of the National School Lunch Act and Sec. 20 of the Child Nutrition Act]

House bill

Provides that the annual total school-based block grant provided States as their "entitlement" will be: $6.681 billion for fiscal year 1996, $6.956 billion (fiscal year 1997), $7.237 billion (fiscal year 1998), $7.538 billion (fiscal year 1999), and $7.849 billion (fiscal year 2000).

For each fiscal year, requires the Secretary to reserve from the total entitlement an amount determined necessary, in consultation with the Secretary of Defense, to establish and carry out nutritious food service programs at Defense Department overseas dependents' schools.

Permits States to obligate payments under a school-based nutrition grant in the succeeding fiscal year.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

D. GOALS

Present law

The National School Lunch Act declares it the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of agricultural commodities by assisting States through grants and other means in providing support for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs. [Sec. 2 of the National School Lunch Act]

House bill

Establishes the goals of the School-Based Block Grant Program:

(1) to safeguard the health and well-being of children through the provision of nutritious, well-balanced meals and food supplements;

(2) to provide economically disadvantaged children (see item 21B for definition) access to nutritious free or low-cost meals, food supplements, and low-cost milk;

(3) to ensure that children served under the School-Based Block Grant program are receiving the nutrition they require to take advantage of educational opportunities;

(4) to emphasize foods that are naturally good sources of vitamins and minerals over enriched foods and those high in fat or sodium content;

(5) to provide a comprehensive school nutrition program for children; and

(6) to minimize paperwork burdens and administrative expenses for participating schools.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

E. TIMING OF PAYMENTS

Present law

No provision.

House bill

Directs that the Secretary of Agriculture make school-based nutrition grant payments to the States on a quarterly basis.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

13. ALLOTMENT OF SCHOOL-BASED NUTRITION BLOCK GRANT

Present law

Current activities that may be funded under the House bill's School-Based Nutrition Block Grant program include those now supported by the School Lunch and Breakfast programs, and school-sponsored programs under the Child and Adult Care Food program, the Summer Food Service program, and the Special Milk program.

In all cases, "performance funding" is provided for each meal, supplement, or half-pint of milk served by participating schools, at legislatively established, inflation indexed rates.

House bill

As set forth below, provides for the Secretary of Agriculture to make State allotments of the School-Based Nutrition Block Grant entitlement.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with and amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

A. FIRST YEAR STATE ALLOTMENTS

Present law

No provisions.

House bill

For the first fiscal year in which grants are made, provides that the Secretary make allotments to States based on the proportion of funds each State received under prior law for the preceding fiscal year.

Base-year State Shares: Each State's allotment would be its prior-year share of funds received under the School Lunch and Breakfast programs, plus 12.5% of the amounts received under the Child and Adult Care Food, Summer Food Service, and Special Milk programs.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

B. SECOND YEAR STATE ALLOTMENTS

Present law

No provision.

House bill

For the second fiscal year in which grants are made, provides that (1) 95% of the total entitlement amount be allotted according to each State's share of the amount allotted in the first year and (2) 5% of the entitlement amount allotted be based on each State's share of the number of meals served under the grant during the 1-year period ending the preceding June 30.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

C. THIRD AND FOURTH YEAR STATE ALLOTMENTS

Present law

No provision.

House bill

For the third and fourth fiscal years in which grants are made, provides that (1) 90% of the total entitlement amount be allotted according to each State's share of the amount allotted in the preceding year and (2) 10% of the entitlement amount allotted be based on each State's share of the number of meals served under the grant during the 1-year period ending the preceding June 30.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch (see Item #11).

D. FIFTH YEAR STATE ALLOTMENTS

Present law

No provision.

House bill

For the fifth fiscal year in which grants are made, provides that (1) 85% of the total entitlement amount be allotted according to each State's share of the amount allotted in the fourth year and (2) 15% of the entitlement amount allotted be based on each State's share of the number of meals served under the grant during the 1-year period ending the preceding June 30.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

14. APPLICATION FOR SCHOOL-BASED NUTRITION GRANTS

Present law

Nutrition requirements for school-provided meals are established by the Secretary of Agriculture on the basis of tested nutritional research, are not to be construed to prohibit substitution of foods to accommodate medical or other special dietary needs, must, at a minimum, be based on the weekly average nutrient content of school lunches, and may, with certain limits on how schools may be required to implement them, be based on the Federal "Dietary Guidelines for Americans." [Sec. 9(a) and Sec. 12(k) of the National School Lunch Act, and Sec. 4(e) of the Child Nutrition Act]

The use/disclosure of information obtained from applications for free/reduced-price meals is limited to those administering/enforcing child nutrition programs, administrators of other health or education programs (with restrictions), and the General Accounting Office and law enforcement officials. [Sec. 9(b) of the National School Lunch Act]

House bill

Provides that the Secretary make a school-based nutrition grant to a State if it submits an application containing only the following:

(1) an agreement that the State will use the grant in accordance with the School-Based Block Grant program requirements (see item 15);

(2) an agreement that the State will set minimum nutrition requirements for meals provided under the grant based on the most recent tested nutrition research available (but the requirements could not be construed to prohibit the substitution of foods to accommodate medical or other special dietary needs and would have to be based, at a minimum, on the weekly average nutrient content of school lunches or other standards set by the State);

(3) an agreement that, with respect to provision of meals to students, the State will implement minimum nutrition requirements based on the most recent tested nutrition research

available or the model nutrition standards developed by the National Academy of Sciences (see item 20);

(4) an agreement that the State will take reasonable steps it deems necessary to restrict the use and disclosure of information about those receiving assistance under the grant;

(5) an agreement that the State will not use more than 2% of its grant for administrative costs incurred to provide assistance; and

(6) an agreement that the State will submit an annual report to the Secretary (see item 16).

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

15. USE OF AMOUNTS PROVIDED UNDER THE SCHOOL-BASED NUTRITION BLOCK GRANT

A. ACTIVITIES SUPPORTED

Present law

The School Lunch and Breakfast programs provide Federal support to schools for nonprofit meal services to schoolchildren. In addition, to a more limited degree, schools offer (and receive Federal subsidies for) after-school food assistance, milk service, and summer food service programs.

House bill

Provides that the Secretary of Agriculture make school-based nutrition grants to States if they agree to use their grant to provide assistance to schools for nutritious food service programs that provide affordable meals and supplements to students, including nonprofit:

(1) school breakfast programs;
(2) school lunch programs;
(3) before and after school supplement programs;
(4) low-cost milk services; and
(5) summer meal programs.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

B. ADDITIONAL REQUIREMENTS

Present law

Under the School Lunch and Breakfast programs, and after-school assistance, milk service, and summer food service programs, schools are provided with specific Federal reimbursements for free and reduced-price meals, supplements, and milk for lower-income children (with family income below 185% of poverty) that are higher than those granted for "paid" meals, supplements, and milk provided those with higher income.

House bill

Requires that each State ensure that not less than 80% of its school-based grant is used to provide free or low-cost meals to economically disadvantaged children (see item 21 for definitions).

Requires that each State ensure that nutritious food service programs are established and carried out in private nonprofit and Defense Department domestic dependents' schools on an equitable basis with programs in public schools in the State—to the extent consistent with the number of children in these schools and after consultation with representatives of the schools (see item 18).

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

C. AUTHORITY TO USE SCHOOL-BASED NUTRITION BLOCK GRANT AMOUNTS FOR OTHER PURPOSES

Present law

No provision.

(2) Sufficient funding

No provision.

(3) Amounts used for other purposes

No provision.

House bill

Allows States to use not more than 20% of amounts received from a school-based nutrition grant for any fiscal year to carry out State programs under other block grants authorized by:

(1) part A of title IV of the Social Security Act (relating to welfare for families with children);

(2) part B of title IV of the Social Security Act (relating to provision of child welfare services);

(3) title XX of the Social Security Act (relating to provision of social services);

(4) the Child Nutrition Act of 1966 (relating to family nutrition block grants); and

(5) the Child Care and Development Block Grant.

Provides that States may not transfer funds to other block grants unless the appropriate State agency makes a determination that sufficient funds will remain available for the fiscal year to carry out activities under the School-Based Block Nutrition Block Grant Program.

Provides that school-based nutrition block grant amounts States transfer to other block grants (noted above) will not be subject to the requirements of the School-Based Nutrition Block Grant program under the revised National School Lunch Act, but will be subject to the requirements that apply to Federal funds provided directly to the block grant to which they are transferred.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

D. LIMITATION ON PROVISION OF COMMODITIES

Present law

Certain schools receive cash or commodity letters of credit in lieu of entitlement commodities (so-called "Cash/CLOC" schools). [Sec. 18(b) of the National School Lunch Act]

House bill

Provides that States may not require current Cash/CLOC schools to accept commodities in lieu of cash or commodity letters of credit.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

E. SEGREGATION/IDENTIFICATION OF CHILDREN ELIGIBLE FOR FREE OR LOW-COST MEALS OR SUPPLEMENTS

Present law

Schools may not physically segregate, overtly identify, or otherwise discriminate against any child eligible for free or reduced-price lunches. [Sec. 9(b)(4) of the National School Lunch Act]

House bill

Requires States to ensure that schools receiving school-based nutrition grant assistance do not physically segregate, overtly identify, or otherwise discriminate against children eligible for free or low-cost meals or supplements.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

16. REPORTS

Present law

No comparable provision.

House bill

Requires that States, as a condition of receiving a school-based nutrition grant, agree to submit an annual report to the Secretary of Agriculture describing:

(1) the number of individuals receiving assistance under the grant for the reporting (fiscal) year;

(2) the different types of assistance provided;

(3) the total number of meals served to students under the grant, including the percentage served to economically disadvantaged students;

(4) the extent to which the assistance provided was effective in achieving the goals of the School-Based Nutrition Block Grant program (see Item #12D);

(5) the standards and methods the State is using to ensure the nutritional quality of assistance under the grant; and

(6) any other information that can be reasonably required by the Secretary.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

17. PENALTIES

A. PENALTY FOR VIOLATIONS

Present law

[Note: See Item #7.]

House bill

Requires the Secretary of Agriculture to reduce the school-based nutrition grant amount otherwise payable to a State by any amount paid under the grant that an audit made under the "Single Audit Act" (chapter 75 of title 31 of the United States Code) finds has been used in violation of the revised National School Lunch Act. However, the Secretary is barred from reducing any quarterly payment to the State by more than 25%.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

B. PENALTY FOR FAILURE TO SUBMIT A REQUIRED REPORT

Present law

No specific provision.

House bill

Requires the Secretary to reduce by 3% the school-based nutrition grant amount otherwise payable to a State for any fiscal year if the Secretary determines that the State has not submitted the required annual report (see item 16) for the immediately preceding fiscal year within 6 months after the end of the fiscal year.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

18. FEDERAL ASSISTANCE FOR CHILDREN IN PRIVATE NONPROFIT SCHOOLS AND DEFENSE DEPARTMENT DOMESTIC DEPENDENTS' SCHOOLS

Present law

Where States are by law precluded from providing child nutrition assistance to certain types of schools (e.g. private nonprofit schools), the Secretary is authorized to provide assistance directly.

House bill

If a State is precluded by law from providing assistance under the school-based nutrition grant to nonprofit private schools or Defense Department domestic dependents' schools, or the Secretary has determined that the State has substantially failed or is unwilling to provide assistance to the schools, requires the Secretary to arrange for provision of school-based nutrition assistance to the schools, after consultation with appropriate school representatives. In the case that the Secretary provides assistance to private nonprofit schools or Defense Department domestic dependents' schools, the State's school-based nutrition grant would be reduced to reflect the assistance provided.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

19. FOOD SERVICE PROGRAMS FOR DEFENSE DEPARTMENT OVERSEAS DEPENDENTS' SCHOOLS

A. ASSISTANCE

Present law

[Note: See Item #12C(2)]

House bill

Requires the Secretary to make available to the Secretary of Defense funds and commodities (as determined by the Secretary in consultation with the Secretary of Defense, and reserved from the total school-based grant) for establishing and carrying out nutritious food service programs providing affordable meals and supplements to students in Defense Department overseas dependents' schools.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

B. REQUIREMENTS

Present law

Federally subsidized school meal programs in Defense Department overseas dependents' schools must meet the same requirements as programs in domestic schools.

House bill

In carrying out food service programs in Defense Department overseas dependents' schools, requires the Secretary of Defense to (1) ensure that not less than 80% of the assistance is used to provide free or low-cost meals and supplements to economically disadvantaged children (see Item #21B for definition) and (2) the schools will implement minimum nutrition requirements in the same way domestic schools receiving assistance under the school-based nutrition grant are required to (including optional use of model nutrition standards).

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

20. MODEL NUTRITION STANDARDS FOR STUDENT MEALS

A. REQUIREMENT

Present law

No comparable provisions. [Note: The Secretary establishes nutrition standards for school meals.]

House bill

Not later than April 1, 1996, requires the National Academy of Sciences to develop model nutrition standards for meals provided to students under the School-Based Block Grant Program. The standards are to be developed by the Food and Nutrition Board of the Academy's Institute of Medicine, in cooperation with nutritionists and directors of school meal programs.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

B. REPORT TO CONGRESS

Present law

No provision.

House bill

Not later than one year after the model nutrition standards (noted above) are developed, requires the National Academy of Sciences to report to Congress regarding the efforts of States to implement them.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see Item #11).

21. DEFINITIONS

A. SCHOOLS AND SECRETARY

Present law

In general, "schools" are defined as public or private nonprofit elementary, intermediate, or secondary schools. The "Secretary" is defined as the Secretary of Agriculture.

House bill

"Schools" and "Secretary" would be defined as having the same meaning as in existing law. In addition, parallel definitions are added for Defense Department domestic and overseas dependents' schools.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see item #11).

B. ECONOMICALLY DISADVANTAGED

Present law

No directly comparable provision. [Note: Subsidies are provided for free and reduced-price meals served to children with family income under 185% of the Federal poverty guidelines. However, Federal school food service subsidies are not limited to these lower-income children.]

House bill

The term "economically disadvantaged" is defined to apply to individuals or families with annual income below 185% of the Federal poverty guidelines. [Note: Assistance under the School-Based Nutrition Grant could be given to children with family income above 185% of poverty.]

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see item #11).

C. STATE

Present law

In general, for school food programs, "State" is defined as the 50 States, the District of Columbia, Puerto Rico, the Northern Marianas, American Samoa, and the Virgin Islands.

House bill

"State," under the School-Based Nutrition Grant, would have the same meaning as in present law, except that Indian tribal organizations (as defined under section 4(l) of the Indian Self-Determination and Education Assistance Act) would be included as States and could apply for grants.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see item #11).

22. REPEALERS

Present law

Not applicable.

House bill

Makes conforming technical amendments repealing the Commodity Distribution Reform Act and WIC Amendments of 1987 and the Child Nutrition and WIC Reauthorization Act of 1989.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see item #11).

23. EFFECTIVE DATE

Present law

Not applicable.

House bill

Makes amendments replacing Child Nutrition and National School Lunch Act provisions with Family Nutrition and School-Based Nutrition Block Grants effective October 1, 1995.

Senate amendment

No comparable provision.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see item #11).

24. APPLICATION OF AMENDMENTS AND REPEALERS

Present law

Not applicable.

House bill

Provides that amendments and repealers associated with replacing Child Nutrition and National School Lunch Act provisions with Family Nutrition and School-Based Nutrition Block Grants not apply with respect to (1) financial assistance provided under prior law and (2) administrative actions or proceedings commenced or authorized to be commenced before the effective date.

Senate amendment

No comparable provisions.

Conference agreement

Senate recedes with an amendment creating an optional block grant and making changes to National School Lunch Act (see item #11).

25. TERMINATION OF ADDITIONAL PAYMENTS FOR LUNCHES SERVED IN HIGH FREE AND REDUCED PRICE PARTICIPATION SCHOOLS

Present law

Lunches served by school food authorities where 60 percent or more of the lunches are served free or at a reduced price (to children with family income below 185 percent of the Federal poverty income guidelines) are reimbursed at a rate 2 cents a meal higher than regular subsidy rates. [Sec. 4(b) of the National School Lunch Act]

House bill

No comparable provision.

Senate amendment

Effective July 1, 1996 (the 1996–1997 school year), the extra 2 cent per lunch reimbursement to schools with high rates of free and reduced-price participation.

Conference agreement

House recedes with an amendment to drop by 1 cent the extra 2 cent per lunch reimbursement to schools with high rates of free and reduced price participation effective July 1, 1998, the extra 1 cent reimbursement is eliminated.

26. VALUE OF FOOD ASSISTANCE

Present law

Schools and certain other child nutrition sponsors are "entitled" to commodities valued at a legislatively set, inflation-indexed amount per meal served. The per-meal reimbursement rate is indexed annually to reflect the annual percentage change in a 3-month average value of the Price Index for Food Used in Schools and Institutions, and rounded to the nearest ¼ cent. [Sec. 6(e) of the National School Lunch Act]

House bill

No directly comparable provision. [Note: See item 12B.]

Senate amendment

Freezes (for one year) the guaranteed per-meal reimbursement rate for entitlement commodity assistance and revises (by changing rounding rules) the method of calculating this reimbursement rate.

On January 1, 1996, the entitlement commodity reimbursement rate set under current law for the 1995–1996 school year (as rounded to the nearest ¼ cent) would be rounded down to the nearest lower cent. For the 1996–1997 school year, the rate would be frozen at the rate for the 1995–1996 school year (as rounded down to the nearest lower cent). For the 1997–1998 school year, the rate would be the unrounded rate for the 1995–1996 school year, adjusted for inflation over the most recent 12-month period and rounded down to the nearest lower cent. For following school years, the rate would be the unrounded rate for the preceding year, adjusted for inflation over the most recent 12-month period and rounded down to the nearest lower cent. (p. 348)

[Note: Current-law rules as to the inflation-adjustment factor to be used (i.e., the Price Index for Food Used in Schools and Institutions) are not changed.]

Conference agreement

House recedes with an amendment providing that for the 1996–1997 and 1997–1998 school years the entitlement commodity reimbursement rate is frozen at the rate for the 95–96 school year (as rounded down to the nearest lower cent).

27. LUNCHES, BREAKFASTS, AND SUPPLEMENTS

Present law

"Paid" lunches, breakfasts, and supplements are served to those with family income above 185 percent of the Federal poverty guidelines. Guaranteed Federal reimbursement rates for each paid lunch, breakfast, and supplement are indexed annually to reflect changes in the food away from home series of the Consumer Price Index. When indexed, all reimbursement rates (i.e., for paid, free, and reduced-price meals and supplements) are rounded to the nearest ¼ cent. Present law establishes reduced price lunch reimbursement rates set at 40 cents less than the free lunch rates, and sets a maximum meal charge of 40 cents for these lunches. [Sec. 11(a) of the National School Lunch Act]

House bill

No comparable provisions.

Senate amendment

Freezes (for two years) reimbursement rates for paid lunches, breakfasts, and supplements. Revises (by changing rounding rules) the method for calculating reimbursement rates for paid, free, and reduced-price lunches, breakfasts, and supplements. [Note: Reimbursement rates for meals and supplements served in family day care homes and the Summer Food Service program are and would be governed by separate provisions of law (see below).]

On January 1, 1996, reimbursement rates for paid, free, and reduced-price lunches, breakfasts, and supplements set under current law for the 1995–1996 school year (as rounded to the nearest ¼ cent) would be rounded down to the nearest lower cent. For the 1996–1997 and 1997–1998 school years, the reimbursement rates for paid lunches, breakfasts, and supplements would be frozen at the rates for the 1995–1996 school year (as rounded down to the nearest lower cent). For the 1998–1999 school year, the reimbursement rates for paid lunches, breakfasts, and supplements would be the unrounded rates for the 1995–1996 school year adjusted for inflation over the most recent 12-month period for which data are available, and rounded down to the nearest lower cent. For following school years, the reimbursement rates for paid lunches, breakfasts, and supplements would be the unrounded rates for the preceding year adjusted for inflation over the most recent 12-month period, and rounded down to the nearest lower cent.

Reimbursement rates for free and reduced-price lunches, breakfasts, and supplements would continue to be indexed annually for inflation each school year (i.e., no two-year freeze), but would be rounded down to the nearest lower cent. [Note: Current-law rules as to the inflation-adjustment factor to be used (i.e., the food away from home series of the Consumer Price Index) are not changed.]

Conference agreement

Freezes (for two years) reimbursement rates for paid lunches, breakfasts, and supplements. Revises (by changing rounding rules) the method for calculating reimbursement rates for paid, free, and reduced-price lunches, breakfasts, and supplements. [Note: Reimbursement rates for meals and supplements served in family day care homes and the Summer Food Service program are and would be governed by separate provisions of law (see below).]

On January 1, 1996, reimbursement rates for paid, free, and reduced-price breakfasts and supplements set under current law for the 1995–1996 school year would be rounded down to the nearest one cent. On July 1, 1996, reimbursement rates for paid, free and reduced price lunches would be rounded down to the nearest one cent. For the 1996–1997 and 1997–1998 school years, the reimbursement rates for paid lunches, breakfasts, and supplements would be frozen at the rates for the 1995–1996 school year (as rounded down to the nearest lower cent). For the 1998–1999 school year, the reimbursement rates for paid lunches, breakfasts, and supplements would be the unrounded rates for the 1995–1996 school year adjusted for inflation over the most recent 12-month period for which data are available, and rounded down to the nearest lower cent. For following school years, the reimbursement rates for paid lunches, breakfasts, and supplements would be the unrounded rates for the preceding year adjusted for inflation over the most recent 12-month period, and rounded down to the nearest lower cent.

Reimbursement rates for free and reduced-price lunches, breakfasts, and supplements would continue to be indexed annually for inflation each school year (i.e., no two-year freeze), but would be rounded down to the nearest lower cent. [Note: Current-law rules as to the inflation-adjustment factor to be used (i.e., the food away from home series of the Consumer Price Index) are not changed.]

The differential between free and reduced price lunch reimbursements would be lowered by 5 cents (to 45 cents) effective July 1, 2000, and by an additional 5 cents (to 50 cents) effective July 1, 2001, and corresponding changes would be made to the reduced price meal charge limits.

28. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Present law

Under the Summer Food Service program, all meals and supplements served are federally subsidized at legislatively set, inflation-indexed rates that, for the 1995 summer (set in January 1995), were $2.12 for each lunch/supper, $1.18 for each breakfast, and 55.5 cents for each supplement. In addition, sponsors receive payments for administrative costs based on the number of meals/supplements served. Basic Federal payments for lunches, breakfasts, and supplements are indexed for inflation annually based on the food away from home series of the Consumer Price Index, and rounded to the nearest ¼ cent. [Sec. 13(b) of the National School Lunch Act]

House bill

No comparable provisions.

Senate amendment

Establishes new, lower reimbursement rates for meals and supplements served in the Summer Food Service program as follows: $2 for lunches/suppers, $1.20 for breakfasts, and 50 cents for supplements. The new rates would become effective January 1, 1996 (for the 1996 summer program), and be adjusted each January thereafter to reflect changes in the food away from home series of the Consumer Price Index (as under current law). However, while each adjustment would be based on the unrounded rates for the prior 12-month period, it would be rounded down to the nearest cent. [Note: Additional administrative-cost payment rates to sponsors are not affected.]

Conference agreement

House recedes with an amendment establishing new, lower rates for meals and supplements served in the Summer Food service program as follows: $1.82 for lunches served; $1.13 each breakfast served and $.46 for each meal supplement served.

29. SPECIAL MILK PROGRAM

Present law

Under the Special Milk program, the minimum per-half-pint reimbursement rate is indexed annually to reflect changes in the Producer Price Index for Fresh Processed Milk, and rounded to the nearest ¼ cent. [Sec. 3(a) of the Child Nutrition Act]

House bill

No comparable provisions.

Senate amendment

Freezes (for one year) the minimum per-half-pint reimbursement rate and revises (by changing rounding rules) the method of calculating the reimbursement rate.

On Jan. 1, 1996, the minimum reimbursement rate set under current law for the 1995–1996 school year (as rounded to the nearest ¼ cent) would be rounded down to the nearest cent. For the 1996–1997 school year, the minimum reimbursement rate would be frozen at the rate for the 1995–1996 school year (as rounded down to the nearest cent). For the 1997–1998 school year, the minimum reimbursement rate would be the unrounded rate for the 1995–1996 school year adjusted for inflation over the most recent 12-month period for which data are available, and rounded down to the nearest lower cent. For following school years, the minimum reimbursement rate would be the unrounded rate for the preceding year adjusted annually for inflation, and rounded down to the nearest lower cent. [Note: Current-law rules as to the inflation adjustment factor to be used (i.e., the Producer Price Index for Fresh Processed Milk) are not changed.]

Conference agreement

House recedes with an amendment providing that for the 1996–1997 and 1997–1998 school years, the minimum reimbursement rate is frozen at the rate for the 1995–1996 school year (as rounded down to the nearest lower cent).

30. FREE AND REDUCED PRICE BREAKFASTS

Present law

Reimbursement rates for free and reduced-price breakfasts are indexed annually for inflation and rounded to the nearest ¼ cent. [Sec. 4(b) of the Child Nutrition Act]

House bill

No comparable provision.

Senate amendment

Requires that annual adjustments to reimbursement rates for free and reduced-price breakfasts be based on the previous year's unrounded rates and, after adjustment for inflation, rounded down to the nearest lower cent.

Conference agreement

House recedes.

31. CONFORMING REIMBURSEMENT FOR PAID BREAKFASTS AND LUNCHES

Present law

The per-meal reimbursement for paid breakfasts (paid meals are those served to children with family income above 185 percent of the Federal poverty income guidelines) is higher than the reimbursement rate for paid lunches—by about 2 cents a meal for the 1995–1996 school year. [Sec. 4(b) of the Child Nutrition Act]

[Note: The paid breakfast reimbursement rate is roughly the *same* as the current-law paid lunch rate for schools with free and reduced-price participation of 60 percent or more. This special lunch rate would be eliminated under Sec. 401 of the Senate amendment (see item 25).]

House bill

No comparable provision.

Senate amendment

Requires that the reimbursement rate for paid breakfasts be the same as the rate for paid lunches.

Conference agreement

House recedes.

32. SCHOOL BREAKFAST STARTUP GRANTS

Present law

The Secretary is required to make competitive grants to help defray costs associated with starting or expanding school breakfast and summer food service programs. Funding of $5 million a year is provided through fiscal year 1997; $6 million is provided for fiscal year 1998; and $7 million a year is provided for fiscal year 1999 and each subsequent year. [Sec. 4(g) of the Child Nutrition Act]

House bill

No comparable provision.

Senate amendment

Repeals the startup/expansion competitive grant program.

Conference agreement

House recedes.

33. NUTRITION EDUCATION AND TRAINING PROGRAMS

Present law

The Secretary is required to make funding available to States for child nutrition program nutrition education and training activities. Funding of $10 million a year is provided. [Sec. 19(i) of the Child Nutrition Act]

House bill

No comparable provision.

Senate amendment

Reduces the amount that must be provided for nutrition education and training to $7 million a year.

Conference agreement

House recedes with an amendment eliminating mandatory status. Authorizes appropriations of $10 million per year.

34. EFFECTIVE DATE

Present law

Not applicable.

House bill

No comparable provision.

Senate amendment

Establishes Oct. 1, 1996 as the effective date for repeal of the startup/expansion competitive grant program and reduction of funding for nutrition education and training.

Conference agreement

House recedes.

36. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

PERMITTING OFFER VERSUS SERVE

Present law

No provision. [Note: The "offer versus serve" option is permitted in school meal programs.]

House bill

No comparable provision.

Senate amendment

Allows schools operating summer food service programs to permit children attending a site on school premises to refuse one item of a meal without affecting the Federal reimbursement for the meal.

Conference agreement

House recedes.

37. CHILD AND ADULT CARE FOOD PROGRAM

A. PAYMENTS TO SPONSOR EMPLOYEES

Present law

No provision.

House bill

No comparable provision.

Senate amendment

Bars Child and Adult Care Food program sponsoring organizations with more than one employee from basing payments to employees on the number of family/group day care homes recruited, managed, or monitored.

Conference agreement

House recedes.

B. IMPROVED TARGETING OF DAY CARE HOME REIMBURSEMENTS

Present law

Federal reimbursement rates for meals and supplements served in family/group day care homes are standard for all homes, established separately from those for day care centers, not differentiated by the participating children's family income (as is the case for day care centers), and set approximately half-way between reimbursements for free and reduced-price meals/supplements in day care centers. They are indexed for inflation each July 1 (see item 36B(2)), and, for the period July 1995–June 1996, they are: $1.5375 for all lunches/suppers, 84.5 cents for all breakfasts, and 45.75 cents for all supplements. Family/group day care home sponsors also receive separate administrative cost reimbursements based on the number of homes sponsored. [Sec. 17(f) of the National School Lunch Act]

Meal and supplement reimbursements for family/group day care homes are indexed annually to reflect changes in the Consumer Price Index for food away from home and rounded to the nearest ¼ cent. [Sec. 17(f) of the National School Lunch Act]

House bill

No comparable provisions.

Senate amendment

Restructures reimbursements for meals and supplements served in family/group day care homes. In general, homes would be divided into two "*tiers*," one of which would receive current-law reimbursements (with indexing adjustments, see item 37B(2) for changes in inflation indexing rules) and the other of which would receive lower reimbursements as set out under the Senate amendment. [Note: Separate payments to sponsors based on the number of homes sponsored are not changed, and current rules barring certain documentation requirements and reimbursements for meals/ supplements served to providers' children are retained.]

Tier I homes would be paid the meal/supplement reimbursements for family/group homes in effect on the date of enactment, adjusted on August 1, 1996, and each July 1 thereafter, to reflect inflation for the most recent 12-month period for which data are available.

Tier I homes would be those (1) located in areas, as defined by the Secretary based on Census data, in which at least half of the children are members of households with income below 185 percent of the Federal poverty income guidelines, (2) located in an area served by a school enrolling elementary students in which at least 50 percent of those enrolled are certified eligible for free or reduced-price school meals (i.e., have family income below 185 percent of the Federal poverty guidelines), or (3) operated by a provider whose family income is verified by its sponsoring organization to be below 185 percent of the poverty guidelines.

In general, *tier II* homes would be paid reimbursements of $1 for each lunch/supper, 30 cents for each breakfast, and 15 cents for each supplement (all substantially below *tier I* rates), adjusted on July 1, 1997, and each July 1 thereafter, to reflect inflation for the most recent 12-month period for which data are available.

Tier II homes would be homes that do not meet the *tier I* low-income area/provider standards.

Tier II homes could, at their option, claim higher *tier I* reimbursement rates under certain conditions: *Tier II* homes could elect to receive *tier I* reimbursements for meals/supplements served to children in households with income below 185 percent of the poverty guidelines, if the sponsoring organization collects the necessary income information and makes the appropriate eligibility determinations (in accordance with the Secretary's rules). *Tier II* homes also could receive *tier I* reimbursements for children in or subsidized under (or children of parents in or subsidized under) federally or State supported child care or other benefit programs with an income limit that does not exceed 185 percent of the poverty guidelines, and could restrict their claim for *tier I* reimbursements to these children if they opt not to have income statements collected from parents/caretakers.

The Secretary would be required to prescribe "simplified" meal counting/reporting procedures for use by *tier II* homes (and their sponsors) that elect to claim *tier I* reimbursements for children meeting the income or program participation requirements noted above. These procedures could include: (1) setting an annual percentage of meals/supplements to be reimbursed at *tier I* rates based on the family income of children enrolled during a specific month or other period, (2) placing a home in a reimbursement category based on the percentage of children with household income below 185 percent of poverty, or (3) other procedures determined by the Secretary.

The Secretary also would be permitted to establish minimum requirements for verifying income and program participation for children in *tier II* homes opting to claim *tier I* reimbursement rates.

Requires that reimbursements for family/group day care homes be indexed annually to reflect changes in the Consumer Price Index for food at home, based on the unrounded rates for the preceding 12-month period, and then rounded down to the nearest lower cent.

Requires the Secretary to reserve, from amounts available for the Child and Adult Care Food program in fiscal year 1996, $5 million—to provide grants for (1) training, materials, computer and other assistance to sponsoring organization staff and (2) training and other aid to family/group day care homes in implementing the new reimbursement-rate structure directed by the Senate amendment. The funds would be allocated among the States based on their proportion of participating homes, with a minimum of $30,000 as a State's base funding share, and States would not be allowed to retain more than 30 percent of their grant at the State level (passing the remainder to sponsors and providers).

Requires (1) the Secretary to provide State agencies with Census data necessary for determining homes' *tier I* status and (2) State agencies to provide the data to day care home sponsoring organizations.

Requires State agencies administering school meal programs to provide approved day care home sponsoring organizations a list of schools serving elementary school children in which at least half those enrolled are certified to receive free or reduced-price meals (one test for an area eligible for *tier I* reimbursements). The data for the list must be collected annually and provided on a timely basis to any requesting approved sponsoring organization.

Provides that, in determining homes' *tier I* status, State agencies and sponsoring organizations must use the most current data available.

Provides that a determination that a home is located in an area that qualifies it as a *tier I* home be in effect for three years, unless the State agency determine the area no longer qualifies the home. In the case of a determination made on the basis of Census data, the determination is to be in effect until more recent data are available.

Makes conforming technical amendments recognizing the new structure of family/group day care home reimbursement rates.

Conference agreement

House recedes with an amendment to establish new lower reimbursement rates for *tier II* homes for meals and supplements as follows: $.90 for each lunch and supper; $.25 for each breakfast; and $.10 for supplements.

C. DISALLOWING MEAL CLAIMS

Present law

No specific provision.

House bill

No comparable provision.

Senate amendment

Makes clear that States and sponsoring organizations may recoup reimbursements to day care home providers for improperly claimed meals/supplements.

Conference agreement

House recedes.

D. ELIMINATION OF STATE PAPERWORK AND OUTREACH BURDEN

Present law

Provisions of the National School Lunch Act require (1) States to take affirmative action to expand availability of the Child and Adult Care Food program's benefits (including annual notification of all nonparticipating family/group day care home providers), (2) the Secretary to conduct demonstration projects to test approaches to removing or reducing barriers to participation by homes that operate in low-income areas or primarily serve low-income children, (3) the Secretary and States to provide training and technical assistance to sponsoring organizations in reaching low-income children, and (4) the Secretary to instruct States to provide information/training about child health and development through sponsoring organizations. [Sec. 17(k) of the National School Lunch Act]

House bill

No comparable provision.

Senate amendment

Repeals existing "outreach" requirements noted under present law and requires that (1) States provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the Child and Adult Care Food program and (2) the Secretary assist States in carrying out this obligation.

Conference agreement

House recedes.

E. STUDY OF IMPACT OF AMENDMENTS ON PROGRAM PARTICIPATION AND FAMILY DAY CARE LICENSING

Present law

No provision.

House bill

No comparable provision.

Senate amendment

Not later than two years after the date of enactment, requires the Secretary of Agriculture, in conjunction with the Secretary of Health and Human Services, to study the impact of the revisions to the Child and Adult Care Food program under the Senate amendment on:

(1) the number of participating family day care homes, day care home sponsoring organizations, and day care homes that are licensed, certified, registered, or approved by each State;

(2) the rate of growth in the number of participating homes, sponsors, and licensed, certified, registered, or approved homes;

(3) the nutritional adequacy/quality of meals served in family day care homes that no longer receive reimbursements or no longer receive "full" reimbursements; and

(4) the proportion of low-income children participating in the program. (p. 377)

Requires each State agency to submit data on (1) the number of participating family day care homes on July 31, 1996, and July 31, 1997, (2) the number of licensed, certified, registered, or approved family day care homes on July 31, 1996, and July 31, 1997, and (3) other matters needed to carry out the study as required by the Secretary.

Conference agreement

House recedes.

F. EFFECTIVE DATE AND REGULATIONS

Present law

Not applicable.

House bill

No comparable provisions.

Senate amendment

Establishes the effective date for changes in the family/group day care home reimbursement structure—August 1, 1996. Other changes affecting the Child and Adult Care Food program would be effective on enactment (e.g., grants to assist in implementation of the changes, limits on payments to sponsors' employees).

Requires that, by February 1, 1996, the Secretary issue interim regulations to implement (1) the changes in the family/group day care home reimbursement structure and (2) existing provisions of law for the use of sponsoring organizations' administrative expense payments for startup/expansion and outreach and recruitment activities. Final regulations would be required by August 1, 1996.

Conference agreement

House recedes.

SUBTITLE J—FOOD STAMPS AND COMMODITY DISTRIBUTION

FOOD STAMP REFORM

1. DECLARATION OF POLICY

Present law

The Food Stamp Act's declared policy is to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households. To alleviate hunger and malnutrition among low-income households with limited food purchasing power, the Act authorizes the food stamp program to permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing the food purchasing power of all eligible households who apply. [Sec. 2]

House bill

No comparable provision.

Senate amendment

Adds to the existing Food Stamp Act declaration of policy a statement that Congress intends that the food stamp program support the employment focus and family strengthening mission of public welfare and welfare replacement programs by facilitating transition to economic self-sufficiency through work, promoting employment as the primary means of income support and reducing barriers to employment, and maintaining and strengthening healthy family functioning and family life.

Conference agreement

The Conference agreement follows the House bill.

2. SHORT TITLE

Present law

No provision.

House bill

Cites this subtitle as "The Food Stamp Simplification and Reform Act of 1995."

Senate amendment

No comparable provision.

Conference agreement

The Conference agreement follows the House bill.

3. ESTABLISHMENT OF SIMPLIFIED FOOD STAMP PROGRAM

Present law

The Secretary is directed to establish uniform national standards of eligibility for food stamps (with certain variations allowed for Alaska, Hawaii, Guam, the Virgin Islands, and certain administrative rules). States may not impose any other standards of eligibility as a condition for participation in the program. [Sec. 5(b)]

House bill

Permits States to operate a "simplified food stamp program," either statewide or in any political subdivision. Under this program, households receiving regular cash benefits under the Temporary Assistance for Needy Families (TANF) block grant established by title I of the Personal Responsibility Act (replacing the current Aid to Families with Dependent Children (AFDC) program) could be provided food stamp benefits using the rules and procedures established by the State for its TANF block grant program, as an alternative to using regular food stamp rules.

Senate amendment

Explicitly permits non-uniform standards of eligibility. [Note: Also see item 38]

Conference agreement

The Conference agreement follows the Senate amendment.

4. SIMPLIFIED FOOD STAMP PROGRAM

A. BASIC STATE OPTION

Present law

Households composed entirely of AFDC recipients are automatically eligible for food stamps, with few exceptions (e.g., aliens who do not meet the Food Stamp program's more stringent rules barring illegal aliens). [Sec. 5(a)]

As with other households, food stamp benefits for AFDC households are determined under Food Stamp program rules governing counting of income, expense deductions, and procedural requirements.

House bill

[Note: Sec. 542(a) of the House bill adds a new section 24 to the Food Stamp Act containing rules for the Simplified Food Stamp Program.]

If a State elects to exercise its option to use its TANF block grant rules and procedures for food stamp benefits, requires that (1) households in which all members receive regular cash benefits under a TANF block grant program be automatically eligible for food stamps and (2) food stamp benefits for them be determined under rules and procedures established by the State or locality under the State's TANF block grant program or the regular food stamp program.

Senate amendment

[Note: Sec. 342(a) of the Senate amendment adds a new section 24 to the Food Stamp Act containing rules for the Simplified Food Stamp Program]

Permits a State to exercise an option to use rules and procedures established for its family assistance block grant (under title I of the Senate amendment) to determine food stamp benefits for households in which all members receive family assistance block grant aid: (1) households in which all members receive aid under a family assistance block grant program would be automatically eligible for food stamps; and (2) their food stamp benefits could be determined by using rules and procedures established by the State for its family assistance block grant program, regular food stamp program rules and procedures, or a combination of the two. States also would be allowed to apply a single "shelter standard" to households that receive a housing subsidy and another to households that do not.

Conference agreement

The Conference agreement follows the Senate amendment with an amendment deleting the specific reference to use of a single shelter standard.

B. FEDERAL COST CONTROL

Present law

No comparable provisions.

House bill

Requires that, when approving a State's plan to exercise its option for a simplified food stamp program, the Secretary certify that the average per-household food stamp benefit received by participating TANF households is not expected to exceed the average food stamp benefit level for AFDC or TANF recipients in the preceding fiscal year—adjusted for any changes in the "Thrifty Food Plan" (the basis for food stamp benefit levels). The Secretary also is required to compute the "permissible" average per-household benefit for each State or locality exercising the simplified program option.

Requires that, if average food stamp benefits under the simplified program exceed the permissible level (the Thrifty-Food-Plan-adjusted prior year amount), the State must pay the Federal Government the benefit cost of the excess within 90 days of notification.

Senate amendment

Provides that a State may not operate a simplified food stamp program unless it has an approved plan and requires the Secretary to approve any State plan if the Secretary determines it complies with the provisions of law governing the simplified food stamp program option and would not increase Federal costs under the Food

Stamp Act. Federal costs for this purpose are defined to exclude research, demonstration, and evaluation costs.

Requires the Secretary to determine whether a State's simplified food stamp program is increasing Federal costs under the Food Stamp Act. In making the determination, the Secretary (1) could not require States to collect or report any information on households not included in the simplified food stamp program and (2) could approve State requests to use alternative accounting periods. If the Secretary determines that a simplified food stamp program has increased Federal costs, the State must be notified by January 1 of the succeeding fiscal year.

If the Secretary determines that a simplified program has increased Federal costs for a two-year period, the State must pay the Federal Government the amount of any increased costs within 90 days of the determination (or have amounts due it for administrative costs reduced).

Conference agreement

The Conference agreement follows the Senate amendment with an amendment. The Secretary must, for each fiscal year, determine whether a simplified program is increasing Federal costs above those incurred under the food stamp program in the fiscal year prior to implementation of the simplified program, adjusted for changes in participation, the non-public-assistance income of participants, and the cost of the Thrifty Food Plan. The Secretary must notify the State of a determination of increased Federal costs, and the State must submit for approval a corrective action plan designed to prevent increased Federal costs. If a State fails to submit a plan or carry out an approved plan, the Secretary must terminate approval of the State's simplified program, and the State is ineligible for future participation under simplified program rules.

C. DISQUALIFICATION

Present law

Households penalized for an intentional failure to comply with a Federal, State, or local welfare program may not, for the duration of the penalty, receive an increased food stamp allotment because their welfare income has been reduced. [Sec. 8(d)]

[Note: This has been interpreted by regulation to apply only to reductions in welfare income due to repayment of overpayments resulting from a welfare violation, although a revision of the regulation is scheduled.]

House bill

Provides that (1) households receiving food stamps under the simplified program option who are sanctioned (disqualified or have their benefits reduced) under a State's TANF program may have the same penalty applied for food stamp purposes and (2) food stamp benefits to households participating under the simplified program option may not be increased as the result of a reduction in their TANF benefits caused by a sanction. Any household disqualified from food stamps as the result of a TANF program sanction would be eligible to apply for food stamps (as a new applicant) after the disqualification period has expired.

Senate amendment

[Note: See items 10 and 43.]

Conference agreement

The Conference agreement follows the Senate amendment.

D. EXTENDING RULES TO "MIXED" HOUSEHOLDS

Present law

No comparable provisions.

House bill

Allows States the further option of applying their TANF rules and procedures to food stamp households in which some, but not all, members receive TANF benefits. These households would not be automatically eligible for food stamps (they would have to meet normal food stamp eligibility rules), but their benefits could be determined under the State's TANF rules and procedures, so long as the Secretary ensures that the State's plan provides for an "equitable" distribution of benefits among all household members.

Senate amendment

No comparable provisions.

Conference agreement

The Conference agreement follows the Senate amendment. The conferees encourage the Secretary to work with States to test methods for applying a single set of rules and procedures to households in which some, but not all, members receive cash welfare benefits under State rules.

E. CASH ASSISTANCE

Present law

No comparable provisions.

House bill

Allows States exercising the simplified program option to pay food stamp benefits in cash to some participating households. Cash benefits could be paid to households with 3 or more consecutive months' earned income of at least $350 a month from a private sector employer.

Provides that: (1) cash assistance in lieu of food stamps be considered the food stamp benefit of the earner's household, (2) the value of food stamp benefits provided in cash be treated as food stamp coupons for taxation and other purposes (i.e., disregarded), and (3) the State opting for cash payments increase the payments (at State expense) to offset the effect of any food sales taxes, unless the Secretary determines it unnecessary because of the limited nature of items taxed (sales taxes on food purchases with food stamp benefits are barred by existing law).

Requires States electing the cash benefit option to submit a written evaluation of the effect of cash assistance after 2 years' operation.

Senate amendment

[Note: See item 55.]

Conference agreement

The Conference agreement follows the Senate amendment.

F. FEDERAL FOOD STAMP RULES

Present law

The Federal Government shares 50% of any State food stamp administrative costs (except that certain States with very low rates of erroneous benefit and eligibility determinations can receive up to 60%). States also may retain certain proportions of any overissued benefits they recoup. Special Federal cost-sharing rules apply in the case of employment and training programs for food stamp recipients. States are subject to a quality control system under which the extent of erroneous benefit and eligibility decisions is measured. Those with high rates of erroneous benefit and eligibility decisions are subject to fiscal sanctions. [Sec. 16]

House bill

Requires States exercising the simplified program option to, at a minimum, comply with certain rules mandated under the Food Stamp Act:

(1) requirements governing issuance procedures for food stamp benefits;

(2) the requirement that benefits be calculated by subtracting 30% of a household's income (as determined by State-established, not Federal, rules under the simplified program option) from the maximum food stamp benefit;

(3) the bar against counting food stamp benefits as income or resources in other programs;

(4) the requirements that State agencies assume responsibility for eligibility certification and issuance of benefits and keep records for inspection and audit;

(5) the bar against discrimination by reason of race, sex, religious creed, national origin, or political beliefs;

(6) requirements related to submission and approval of plans of operation and administration of the food stamp program on Indian reservations;

(7) limits on the use and disclosure of information about food stamp households;

(8) requirements for notice to and fair hearings for aggrieved households (or comparable requirements established by the State under its TANF program);

(9) requirements for submission of reports and other information required by the Secretary;

(10) the requirement to report illegal aliens to the Immigration and Naturalization Service;

(11) requirements for use of certain Federal and State data sources in verifying recipients' eligibility;

(12) requirements to take measures to ensure that households are not receiving duplicate benefits; and

(13) requirements for the provision of social security numbers as a condition of eligibility and for their use by State agencies.

States electing the simplified program option would be subject to normal food stamp program cost-sharing rules.

States electing the simplified option would be subject to the food stamp quality control system (including fiscal sanctions).

Senate amendment

Permits States exercising the option for a simplified food stamp program to apply rules and procedures under their family assistance block grant, the rules/procedures of the regular food stamp program, or the rules/procedures of one program to certain matters and those of the other in remaining matters. Permits States to standardize food stamp expense "deductions," but, in doing so, States would be required to give consideration to the work expenses, dependent care costs, and shelter costs of participating households.

Otherwise, the Senate amendment is the same as the House bill, except that it also would (1) require that States follow the revised rule in the Senate amendment (see item 43) as to not increasing food stamp benefits when other public assistance benefits are decreased (see item 4C in the House bill), (2) require that eligible households be certified and receive benefits not later than 30 days after application (as now required under the regular food stamp program), and (3) require that States issue "expedited" benefits to very low-income households (as required under the regular food stamp program).

Same as House bill.

Conference agreement

The Conference agreement follows the House bill with an amendment (1) allowing States to standardize deductions and (2) requiring States to follow the revised rule in the Senate amendment as to not increasing food stamp benefits when other public assistance benefits are decreased.

G. STATE PLANS

Present law

No comparable provision.

House bill

Requires that State plans for those States electing to exercise the simplified program option include the rules and procedures to be followed in determining benefits under the option, whether the program will include households in which not all members receive TANF grant benefits, and the method by which the State or political subdivision participating in the simplified program will carry out its quality control obligations.

Senate amendment

Requires that State plans for those States electing to exercise the simplified program option include the rules and procedures to be followed in determining benefits under the option, how the States will address the needs of households with high shelter costs, and a description of the method by which the State will carry out its quality control obligations.

Conference agreement

The Conference agreement follows the Senate amendment.

5. CONFORMING AMENDMENTS: SIMPLIFIED FOOD STAMP PROGRAM

Present law

Allows the Secretary to operate pilot projects similar to the simplified food stamp program State option proposed in the House bill. [Sec. 8(e) and Sec. 17(i)]

House bill

Deletes provisions for pilot projects similar to the simplified food stamp program State option.

Senate amendment

Same as the House bill.

Conference agreement

The Conference agreement follows the House bill with an amendment to add necessary conforming amendments.

6. THRIFTY FOOD PLAN

Present law

Maximum monthly food stamp benefits are defined as 103% of the cost of the Agriculture Department's "Thrifty Food Plan," adjusted for food-price inflation each October according to the plan's cost in the immediately preceding June and rounded down to the nearest dollar by household size. [Sec. 3(o)]

House bill

Provides that current maximum monthly food stamp benefits (103% of the cost of the Thrifty Food Plan in June 1994) be increased by 2% a year, beginning with the October 1995 adjustment, and rounded down to the nearest dollar by household size.

Senate amendment

Sets maximum monthly food stamp benefits at 100% of the cost of the Thrifty Food Plan, effective October 1, 1995, adjusted annually, as under existing law and rounded down to the nearest dollar by household size. Requires that the October 1, 1995, adjustment not reduce maximum benefit levels.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment making it effective October 1, 1996.

7. INCOME DEDUCTIONS AND ENERGY ASSISTANCE

A. ENERGY ASSISTANCE

Present law

Payments or allowances for energy assistance provided by State or local law are, under rules set by the Secretary, disregarded ("excluded") as income. [Sec. 5(d)(11) and 5(k)]

Payments or allowances for weatherization assistance are disregarded as energy assistance. [Sec. 5(d)(11) and 5(k)] [Note: Weatherization payments could otherwise be disregarded as lump-sum payments, vendor payments, or reimbursements.]

Federal Low-Income Home Energy Assistance Program (LIHEAP) benefits are disregarded as income. [Sec. 5(d)(11) and 5(k) of the Food Stamp Act and sec. 2605(f) of the Low-Income Home Energy Assistance Act]

Certain utility allowances under Department of Housing and Urban Development (HUD) programs are disregarded. [Sec. 5(d)(11) and 5(k)]

Shelter expense deductions may be claimed for utility costs covered by LIHEAP benefits, but not in the case of other disregarded energy assistance unless the household has additional out-of-pocket expenses. [Sec. 5(e) of the Food Stamp Act and Sec. 2605(f) of the Low-Income Home Energy Assistance Act]

House bill

Requires that State/local energy assistance be counted as income.

Continues to disregard as income payments or allowances for weatherization assistance under a Federal energy assistance program. Other weatherization assistance could be disregarded as lump-sum payments, vendor payments, or reimbursements.

Bars claiming shelter expense deductions for utility costs covered either directly or indirectly by the LIHEAP and other disregarded energy assistance.

Senate amendment

Requires that State/local energy assistance be counted as income..

Requires an income disregard for one-time payments/allowances under a Federal or State law for the costs of weatherization or emergency repair/replacement of unsafe/inoperative furnaces or other heating/cooling devices.

Counts Federal LIHEAP benefits as income.

Counts HUD utility allowances as income.

Allows claiming shelter expense deductions for utility costs covered directly or indirectly by the LIHEAP and other counted energy assistance.

Conference agreement

The Conference agreement follows the Senate amendment.

B. STANDARD DEDUCTIONS

Present law

For purposes of determining food stamp benefits and eligibility, applicant/recipient households may claim standard deductions from their otherwise countable income. Standard deductions are indexed annually (each October 1) for inflation based on the Consumer Price Index for items other than food and rounded down to the nearest dollar. For fiscal year 1995, standard deductions are set at: $134 a month for the 48 States and the District of Columbia, $229 for Alaska, $189 for Hawaii, $269 for Guam, and $118 for the Virgin Islands. For fiscal year 1996, they were "scheduled" to rise to: $138, $236, $195, $277, and $122, respectively, but this was barred by the fiscal year 1996 agriculture appropriations act. [Sec. 5(e)]

House bill

Sets standard deductions at their fiscal year 1995 levels, effective October 1, 1995.

Senate amendment

Reduces standard deductions:

(1) for fiscal year 1996, they would be $132, $225, $186, $265, and $116; and

(2) for fiscal year 1997–2002, they would be $124, $211, $174, $248, and $109.

Inflation indexing of standard deductions would resume October 1, 2002 (using existing indexing rules).

Conference agreement

The Conference agreement follows the House bill and continues to set standard deductions at their fiscal year 1995 levels.

C. EARNED INCOME DEDUCTION

Present law

Households may claim a deduction for 20% of any earned income. This deduction is not allowed with respect to any income that a household willfully or fraudulently fails to report in a timely manner (as proven in a fraud hearing proceeding)—i.e., it is not allowed when determining the amount of a benefit overissuance. [Sec. 5(e)]

House bill

Denies an earned income deduction for the food stamp benefit portion of income earned under a work supplementation/support program. [Note: See item 15.]

Senate amendment

Disallows an earned income deduction for any income not reported in a timely manner—i.e., the deduction would not be allowed in determining the amount of any overissued benefits.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment denying an earned income deduction for the public assistance portion of income earned under a work supplementation/support program.

D. EXCESS SHELTER EXPENSE DEDUCTION

Present law

For purposes of determining food stamp benefits and eligibility, applicant/recipient households may claim excess shelter expense deductions from their otherwise countable income—in the amount of any shelter expenses (including utility costs) above 50% of their countable income after all other deductions have been applied. For households with elderly or disabled members, these deductions are unlimited. For other households, they are limited by law through December 1996; limits are lifted as of January 1, 1997. For fiscal year 1995, excess shelter expense deductions were capped at: $231 a month for the 48 States and the District of Columbia, $402 for Alaska, $330 for Hawaii, $280 for Guam, and $171 for the Virgin Islands. For October 1995 through December 1996, the caps rose to $247, $429, $353, $300, and $182, respectively. [Sec. 5(e)]

States may use "standard utility allowances" (as approved by the Secretary) in calculating households' shelter expenses. However, households may claim actual expenses instead of the allowance and may switch between an actual expense claim and the standard allowance at the end of any certification period and one additional time during any 12-month period. [Sec. 5(e)]

House bill

Sets the limits on excess shelter expense deductions at fiscal year 1995 levels.

Senate amendment

Permits States to make the use of standard utility allowances mandatory for all households if (1) the State has developed separate standards that include the cost of heating and cooling and do not include these costs and (2) the Secretary finds that the standards will not result in increased Federal costs.

Removes the option for households to switch between a standard utility allowance and actual costs once during every 12-month period.

Conference agreement

The Conference agreement follows the Senate amendment with an amendment that establishes excess shelter expense deduction limits at the October 1995/December 1996 levels.

E. HOMELESS SHELTER DEDUCTION

Present law

For homeless households not receiving free shelter throughout the month, States may develop a homeless shelter expense estimate (a standard amount) to be used in calculating an excess shelter expense deduction. States must use this amount unless the household verifies higher expenses. The Secretary may prohibit the use of the deduction for households with extremely low shelter costs. The amount is inflation indexed, and, for fiscal year 1995, it is limited to $139 a month; effective October 1, 1995, it is scheduled to rise to $143. [Sec. 11(e)(3)]

House bill

Sets the homeless shelter deduction at the fiscal year 1995 $139 a month amount and requires that it be used in establishing homeless households' excess shelter expense deductions when they do not receive free shelter throughout the month.

Senate amendment

Same as the House bill, except that States may prohibit the use of the deduction for households with extremely low shelter costs.

Conference agreement

The Conference agreement follows the Senate amendment.

8. VEHICLE ALLOWANCE

A. THRESHOLD FOR COUNTING A VEHICLE'S VALUE

Present law

In determining a household's liquid assets for food stamp eligibility purposes, a vehicle's fair market value in excess of $4,550 is counted. This threshold rose to $4,600 in October 1995 and is scheduled to be annually indexed for inflation beginning in fiscal year 1997. [Sec. 5(g)(2)] [Note: Eligible households may have liquid assets of no more than $2,000 ($3,000 for households with elderly members).]

House bill

Sets the threshold above which the fair market value of a vehicle is counted as an asset at $4,550.

Senate amendment

Eliminates the October 1, 1995 increase in the threshold to $4,600 and requires that the $4,550 threshold begin to be inflation adjusted on October 1, 1996.

Conference agreement

The Conference agreement follows the House bill, with an amendment setting the threshold at $4,600.

B. VEHICLES CARRYING FUEL OR WATER

Present law

In determining a household's liquid assets for food stamp eligibility purposes, the value of a vehicle that the household depends on to carry fuel for heating or water for home use is excluded. [Sec. 5(g)(2)]

House bill

Deletes the asset exclusion for vehicles used to carry fuel or water.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the House bill.

9. WORK REQUIREMENTS

Non-exempt recipients between 16 and 60 are ineligible for food stamps if they refuse to register for employment, refuse to participate in an employment/training program when required to do so by the State, or refuse a job offer meeting minimum standards. [Sec. 6(d)]

Exempt individuals are: (1) those who are not physically or mentally fit, (2) those subject to and complying with a work/training requirement under the AFDC program or the unemployment compensation system (although failure to comply with an AFDC/unemployment system requirement is treated as a failure to comply with food stamp rules, if the requirement is "comparable"), (3) parents and other household members with the responsibility for care of a dependent child under age 6 or an incapacitated person, (4) postsecondary students enrolled at least half-time (separate rules bar eligibility for most postsecondary students who are not working or do not have dependents), (5) regular participants in drug addiction or alcoholic treatment programs, (6) persons employed at least 30 hours a week or receiving the minimum wage equivalent, and (7) persons between 16 and 18 who are not head of household and are in school at least half time. [Sec. 6(d)(1) and (2)]

In addition, if a non-exempt head of household fails to comply with one of the above-noted requirements or voluntarily quits a job without good cause, or if any non-exempt household member is on strike, the entire household is ineligible for food stamps. [Sec. 6(d)(1) & (3)]

A. JOB SEARCH

Present law

As noted above, non-exempt individuals refusing to participate in an employment/training program when required to do so by the State are ineligible for food stamps (if they are head of household, the entire household is ineligible). State-designed employment and training programs may include a requirement to perform job search activities. [Sec. 6(d)(1) & (2)]

House bill

Makes ineligible non-exempt individuals (and their households if they are head of household) who refuse to participate in a State-established job search program. [Note: Able-bodied non-elderly adults without dependents would be subject to new work requirements, see below.]

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

B. COMPARABLE WORK REQUIREMENTS

Present law

As noted above, individuals are exempt from food stamp employment/training requirements if they are subject to and complying with an AFDC or unemployment compensation work/training requirement, and failure to comply with such an AFDC or unemployment compensation requirement is treated as failure to comply with food stamp employment/ training requirements, if the requirement is "comparable." [Sec. 6(d)(2)]

House bill

Requires that failure to comply with an TANF or unemployment compensation system work/training requirement be treated as failure to comply with a food stamp employment/training requirement, whether or not the requirement is "comparable."

Senate amendment

Same as the House bill.

Conference agreement

The Conference agreement follows the House bill.

C. NEW WORK REQUIREMENT

Present law

As noted above, non-exempt individuals are ineligible for food stamps if they refuse to participate in an employment/training program when required to do so by the State. [Sec. 6(d)(1)]

House bill

Deletes provisions of law barring eligibility to those refusing to participate in State-established employment/training programs.

In their place, adds a new work requirement: non-exempt recipients (see below) would be disqualified if they are not employed a minimum of 20 hours a week or are not participating in the work program newly established under the House bill (see below) within 90 days of certification of eligibility.

Allows individuals who have been disqualified under the new work requirement to re-establish food stamp eligibility if they become exempt (under the rules noted immediately below), become employed at least 20 hours a week during any consecutive 30-day period, or participate in a work program (see below).

Exempt from the new requirement would be: (1) those under 18 or over 50, (2) those medically certified as physically or mentally unfit for employment, (3) parents or other household members responsible for the care of a dependent child, and (4) those who are otherwise exempt from work registration and job search rules (see present law description above).

Upon a State's request, allows the Secretary to waive application of the new work requirement for some or all individuals in all or part of a State if the Secretary determines that the area (1) has an unemployment rate over 10% or (2) does not have sufficient jobs to provide employment for those subject to the new requirement. The Secretary would be required to report to the Agriculture Committees the basis for any waiver based on lack of sufficient jobs.

Senate amendment

Adds a new work requirement: non-exempt persons (see below) would be ineligible if, during the preceding 12-month period, they received food stamps for 6 months or more while not working 20 hours or more a week (averaged monthly) or participating in and complying with a work/training program (see *note* regarding exemptions below) for at least 20 hours a week.

Exempt from the new requirement would be: (1) those under 18 or over 50, (2) those certified by a physician as physically or mentally unfit for employment, (3) parents or other household members responsible for the care of a dependent, (4) those participating a minimum of 20 hours a week in (and complying with the requirements of) a Job Training Partnership Act (JTPA) program, a Trade Adjustment Assistance Act training program, or a State or local government employment or training program meeting Governor-approved standards, and (5) those otherwise exempt from work registration and job search rules (see present law description above.) [Note: The new work requirement could be met by those participating in and complying with (for 20 hours a week or more) a JTPA program, a Trade Adjustment Assistance training program, or a State/local employment or training program meeting Governor-approved standards (including a food stamp program employment/training activity other than job search or job search training).]

As in the House bill, waivers are allowed, except that the unemployment rate threshold is 8% and the Secretary must report the basis for *any* waiver.

Provides for a transition to the new work requirement. Prior to October 1, 1996, administrators would not "look back" a full 12 months in determining whether a recipient had been receiving food stamps and not meeting the new requirement; they would look back only to October 1, 1995.

Conference agreement

The Conference agreement follows the House bill, with an amendment. Non-exempt persons (see below) are ineligible if, during the preceding 12-month period, they received food stamps for 4 months or more while not working 20 hours or more a week (averaged monthly), participating in and complying with a work program (see below) for at least 20 hours a week, or participating in a workfare program.

Exempt from the new requirement are: (1) those under 18 or over 50, (2) those medically certified as physically or mentally unfit for employment, (3) parents or other household members responsible for the care of a dependent child, (4) those otherwise exempt from work registration or job search rules (e.g., those caring for incapacitated persons), and (5) pregnant women.

Work programs allowing an exemption are programs under the JTPA or the Trade Adjustment Assistance Act, or employment/training programs operated or supervised by a State or locality meeting standards approved by the Governor (including a food stamp employment/training program)—except for job search or job search training programs.

Waiver reports are required for any waiver based on unemployment rates (over 10%) or lack of sufficient jobs.

The disqualification imposed by the new work requirement ceases to apply if, during a 30-day period, an individual works 80 hours or more, participates in and complies with a work program for at least 80 hours, or participates in a workfare program. In the subsequent 12-month period, an individual is eligible for food stamps for up to 4 months while not working for at least 20 hours a week, participating in a work program for at least 20 hours a week, or participating in a workfare program.

As in the Senate amendment, a transition to the new work requirement is provided.

D. DISQUALIFICATION

Present law

[Note: See present law description above. In addition, disqualification periods for failure to fulfill work requirements are (1) 2 months or until compliance (whichever is first) for most failures and (2) 90 days in case of a voluntary quit.]

House bill

No comparable provisions. [Note: The House bill creates new disqualification penalties for those covered by its new work requirement.]

Senate amendment

Rewrites and adds to rules governing disqualification for violation of work and employment/training requirements (other than those for the new work requirement noted above).

In addition to existing provisions for disqualification (e.g., job refusal, failure to participate in an employment/training program), makes ineligible (1) individuals who refuse without good cause to provide sufficient information to allow a determination of their employment status or job availability, (2) *all* individuals (in addition to heads of household) who voluntarily and without good cause quit a job, and (3) individuals who voluntarily and without good cause reduce their work effort (and, after the reduction, are working less than 30 hours a week).

Establishes a new *household* ineligibility rule: if any individual who is head of household is disqualified under a work rule, the entire household would, at State option, be ineligible for the lesser of the duration of the individual's ineligibility or 180 days—as determined by the State.

Establishes new mandatory minimum work-rule disqualification periods for individuals. For the first violation, individuals would be ineligible until the *later* of the date they fulfill work rules, for 1 month, or a period (determined by the State) not to exceed 3 months. For the second violation, individuals would be ineligible until the *later* of the date they fulfill work rules, for 3 months, or a period (determined by the State) not to exceed 6 months. For a third or subsequent violation, individuals would be ineligible until the later of the date they fulfill work rules, 6 months, a date determined by the State, or (at State option) permanently. These disqualification periods also would apply to those failing to meet any workfare requirements.

In establishing good cause, voluntary quits, and reduction of work effort, the Secretary would determine the meaning of the terms. States would determine the meaning of other terms and the procedures for making compliance decisions, but could not make a determination that would be less restrictive than a comparable one under the State's family assistance block grant program.

States would be required to include the standards and procedures they use in making work-rule disqualification/compliance decisions in their State plan.

Conference agreement

The Conference agreement follows the Senate amendment.

E. CARETAKER EXEMPTION

Present law

Parents or other household members with responsibility for the care of a dependent child under age 6 or of an incapacitated person are exempt from food stamp work rules. [Sec. 6(d)(2)]

House bill

No provision.

Senate amendment

Permits States to lower the age at which a child "exempts" a parent/caretaker from 6 to not under the age of 1.

Conference agreement

The Conference agreement follows the Senate amendment.

F. WORK AND EMPLOYMENT/TRAINING PROGRAMS

Present law

States must operate employment and training programs for non-exempt food stamp recipients and place at least 15% of those covered in a program component. Exempt are those listed above and those States opt to exempt under Federal rules. Program components can range from job search or education activities to work experience/training and "workfare" assignments. [Sec. 6(d)(4)]

Work experience/training program components must limit assignments to projects serving a useful public purpose, use the prior training/experience of assignees, not provide work that has the effect of replacing others, and provide the same benefits and working conditions provided to other comparable employees. [Sec. 6(d)(4)(B)]

States and political subdivisions also may operate workfare programs under which non-exempt recipients may be required to perform work in return for the minimum wage equivalent of their household's monthly food stamp allotment. In general, those exempt are those listed above (p. 16). [Sec. 20]

Workfare assignments may not have the effect of replacing or preventing the employment of others and must provide the same benefits and working conditions provided to other comparable employees. [Sec. 20(d)]

The total hours of work required of a household under an employment/training program (including workfare) cannot in any month exceed the minimum wage equivalent of the household's monthly food stamp benefit. The total hours of participation in an employment and training program required of any household member cannot in any month exceed 120 hours (when added to other work). And, workfare hours (when added to other work) cannot exceed 30 hours a week for a household member. [Sec. 6(d)(4)(F) and Sec. 20(c)]

Under employment and training programs for food stamp recipients, States must provide or pay for transportation and other costs directly related to participation (up to $25 a month for each participant) and necessary dependent care expenses (in general, up to $175 or $200 a month for each dependent, depending on the dependent's age). Under workfare programs, States must reimburse participants for transportation and other costs directly related to participation (up to $25 a month for each participant). [Sec. 6(d)(4)(I) and Sec. 20 (d)(3)]

House bill

Deletes the requirement for States to operate employment and training programs and current provisions for work experience/ training and workfare programs.

Instead, requires the Secretary to permit any State that applies and submits a plan in compliance with the Secretary's guidelines to operate a work program for food stamp recipients subject to the new work requirement (see above) in the State or any political subdivision. A State's work program would require those accepting an offer of a work position in order to maintain food stamp eligibility to perform work on the State or local jurisdiction's behalf, or on behalf of a private nonprofit entity. The Secretary's guidelines would be required to allow States and localities to operate a work program that is consistent and compatible with similar programs they might operate.

Requires that, in order to be approved, a State's work program provide that participants work no more than the minimum wage equivalent of their household's monthly food stamp benefit (i.e., the number of hours equivalent to their household's monthly benefit divided by the minimum wage).

Limits the degree to which a State or locality can assign participants to replace other workers. No State/locality could replace an employed worker with a work program participant, but participants could be placed in (1) new positions, (2) positions that became available during the normal course of business, (3) positions that involve performing work that would otherwise be performed on an overtime basis, or (4) positions that became available by shifting current employees to an alternate position. [Note: States would receive Federal cost sharing for work program participant expenses (see below).]

Senate amendment

Revises the existing requirements for State-operated employment/training programs for food stamp recipients: (1) makes clear the work experience is a purpose of employment/training programs; (2) requires that each component of an employment/training program be delivered through a "statewide workforce development system," unless the component is not available locally; (3) expands the existing State option to apply work rules to applicants at application to all work requirements, not only job search; (4) removes specific rules governing job search components (i.e., tied to those for the AFDC program); (5) removes provisions for employment/training components related to work experience requiring that they be in public service work and use (to the extent possible) recipients' prior training and experience; (6) removes specific Federal rules as to States' authority to exempt categories and individuals from employment/training requirements; (7) removes the requirement to serve volunteers in employment/training programs; (8) removes the requirement for "conciliation procedures" for resolution of disputes involving participation in an employment or training program; (9) limits employment/training funding provided by the food stamp program for services to AFDC or family assistance block grant funding recipients to the amount used by the State for AFDC recipients in fiscal year 1995; and (10) removes Federal performance standards on States for employment/training programs for food stamp recipients.

Conference agreement

The Conference agreement follows the Senate amendment.

G. FUNDING WORK AND EMPLOYMENT/TRAINING PROGRAMS

Present law

To support employment and training programs for food stamp recipients, States receive a formula share of $75 million a year (based partially on their share of food stamp recipients not exempt from work registration and employment/training requirements and partially on their share of those placed in employment/training program components). Minimum State annual allocations are $50,000.

In addition to its portion of the $75 million annual grant, each State is entitled to (1) 50% of any additional costs incurred, (2) 50% of any transportation or other participant costs paid or incurred up to half of $25 a month for each participant, and (3) 50% of any dependent care costs paid or incurred up to half of certain limits (generally, $175/$200 a month for each dependent, depending on the dependent's age). [Sec. 16(h)]

House bill

To support work programs for food stamp recipients, requires the Secretary to allocate among States and localities operating them $75 million a year, based on their share of recipients subject to the new work requirement (see above). Minimum State allocations would be $50,000.

Requires States to notify the Secretary as to their intention to operate a work program, and requires the Secretary to reallocate unclaimed portions of the $75 million annual grant to other States, as the Secretary deems appropriate and equitable.

Requires that, in addition to its portion of the $75 million annual grant, the Secretary pay each State (1) 50% of any additional costs incurred and (2) 50% of any transportation or other participant costs paid or incurred up to half of $25 a month for each participant.

Allows the Secretary to suspend or cancel some or all payments made to States for the work program, or withdraw approval, on a finding of noncompliance.

Senate amendment

To support employment/training programs for food stamp recipients, requires the Secretary to "reserve for allocation" to States: $77 million for fiscal year 1996, $80 million for fiscal year 1997, $83 million for fiscal year 1998, $86 million for fiscal year 1999, $89 million for fiscal year 2000, $92 million for fiscal year 2001, and $95 million for fiscal year 2002. Allocations would be based on a "reasonable formula" (determined by the Secretary) that gives consideration to States' shares of the population affected by the new work requirement (see above). Minimum State allocations would be $50,000.

Requires reallocations as in the House bill.

Continues existing provisions for payments for additional costs, but adds explicit permission for a 50% Federal share of State case management costs.

Conference agreement

The Conference agreement follows the Senate amendment.

H. CONFORMING AMENDMENT

Present law

There is authorized a demonstration project similar to the new work requirement in the House bill; it has not been implemented. [Sec. 17(d)]

House bill

Deletes authorization for a demonstration project similar to the new work requirement in the House bill.

Senate amendment

Makes several technical and conforming amendments to employment and training provisions.

Conference agreement

The Conference agreement follows the House bill and makes technical and conforming amendments.

10. COMPARABLE TREATMENT OF DISQUALIFIED INDIVIDUALS

Present law

[Note: See item 4C.]

House bill

Requires that individuals who have been disqualified for noncompliance with requirements under a TANF program not be eligible to participate for food stamps during the disqualification period.

Senate amendment

If an individual is disqualified for failure to perform an action required under a Federal, State, or local welfare/public assistance program, permits States to impose the same disqualification for food stamps.

If a disqualification is imposed under the family assistance block grant, permits States to use the family assistance block grant's rules and procedures to impose the same disqualification for food stamps.

Permits individuals disqualified from food stamps because of failure to perform a required action under another welfare/public assistance program to apply for food stamps as new applicants after the disqualification period has expired—except that a prior disqualification under food stamp work requirements must be considered in determining eligibility.

Requires States to include the guidelines they use in carrying out food stamp disqualification for failure to perform a required action in another welfare/public assistance program in their State plans.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment changing references to welfare or public assistance programs to references to needs-tested public assistance programs.

11. ENCOURAGE ELECTRONIC BENEFIT TRANSFER SYSTEMS

A. REGULATION E

Present law

The Federal Reserve Board has ruled that, as of March 1997 and with some minor modifications, its "Regulation E" will apply to electronic benefit transfer systems. Regulation E provides certain protections for consumers using cards to access their accounts. It limits the liability of cardholders for unauthorized withdrawals (to $50, if notification is made) and requires periodic account statements and certain error resolution procedures. [*Federal Register* of Mar. 7, 1994]

House bill

[Note: See item 56 for optional block grants for States fully implementing electronic benefit transfer systems.]

Provides that Regulation E not apply to any electronic benefit transfer program (distributing needs-tested benefits) established or administered by States or localities.

Senate amendment

Provides that Regulation E not apply to food stamp benefits delivered through any electronic benefit transfer system.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

B. CHARGING FOR ELECTRONIC BENEFIT TRANSFER CARD REPLACEMENT

Present law

No specific provision.

House bill

No provision.

Senate amendment

Provides that States may charge recipients for the cost of replacing a lost or stolen electronic benefit transfer card and may collect the charge by reducing the recipient's food stamp benefit.

Conference agreement

The Conference agreement follows Senate amendment.

C. PHOTOGRAPHIC IDENTIFICATION

Present law

No provision.

House bill

Requires that each electronic benefit transfer card bear a photograph of the members of the household to which the card is issued.

Senate amendment

Permits States to require that electronic benefit transfer cards contain a photograph of 1 or more household members and requires that, if a State requires a photograph, it shall establish procedures to ensure that other appropriate members of the household and authorized representatives may use the card.

Conference agreement

The Conference agreement follows the Senate amendment.

D. RULES FOR ELECTRONIC BENEFIT TRANSFER SYSTEMS

Present law

State agencies, with the Secretary's approval, may implement on-line electronic benefit transfer systems for delivering food stamp benefits, in lieu of coupons. No State may implement or expand an electronic benefit transfer system without prior approval from the Secretary. States are responsible for 50% of any electronic benefit transfer system costs (as with any benefit issuance system), including equipment and electronic benefit transfer cards. [Sec. 7(i)]

The Secretary's regulations for approval must (1) include standards that require that, in any one year, the operational cost of an electronic benefit transfer system does not exceed costs of prior issuance systems and (2) include system security standards. [Sec. 7(i)]

House bill

Deletes requirements for the Secretary's prior approval, "encourages" State agencies to implement on-line electronic benefit transfer systems for delivering food stamp benefits, and authorizes States to procure and implement these systems (under terms, conditions and designs that the State deems appropriate).

Allows the Secretary to waive, on a State's request, any provision of the Food Stamp Act that prohibits effective implementation of an electronic benefit transfer system for food stamp benefits.

Requires re-issuance and revision of regulations governing food stamp electronic benefit transfer systems (current regulations for approval of these systems were issued in April 1992).

Deletes the requirement that the Secretary's regulations for electronic benefit transfer systems require that costs of the electronic benefit transfer system in any one year not exceed costs of prior issuance systems.

Adds requirements that the Secretary's standards for electronic benefit transfer systems include (1) measures to maximize system security using the most recent technology the State considers appropriate (including personal identification numbers, photographic identification on electronic benefit transfer cards, and other measures to protect against fraud and abuse) and (2) effective not later than 2 years after enactment, measures that permit electronic benefit transfer systems to differentiate food items that may be acquired with food stamp benefits from those that may not.

Senate amendment

Permits States to implement EBT systems under rules separate from those in existing law as amended, if a State notifies the Secretary of its intent to convert to a statewide system within 3 years of enactment. The Secretary may not provide coupons to a State beginning 3 years after the chief executive gives notification of intent to convert under the EBT option—but the State may extend this deadline by 2 years and the Secretary may grant a waiver of up to 6 months for good cause. [Note: The Secretary is authorized to provide coupons for disaster relief.]

Places requirements on the Secretary under the EBT option. The Secretary must:

(1) assist States in converting to an EBT system and (in consultation with the Inspector General and the Secret Service) inform States about proper security features, management techniques, and counterfeit deterrence;

(2) reimburse States for purchasing and issuing EBT cards [Note: The Secretary may charge recipients (through allotment reduction or otherwise) for the cost of replacing lost or stolen cards, unless stolen by force or threat of force];

(3) assign additional employees to investigate and monitor compliance with EBT and retailer participation rules;

(4) establish a Transition Conversion Account (TCA) to be funded with transaction fees of no more than 2 cents a transaction (maximum of 16 cents a month) taken from each EBT household's benefits [Note: Fees would be imposed during the 10-year period beginning on enactment and placed in the TCA at the beginning of each year during the 10-year period beginning with the first full fiscal year after enactment. They would be imposed to the extent necessary to not increase the Secretary's costs under the EBT option and could not be greater than needed for the purposes of the TCA (see below). Fees could be reduced for households receiving maximum benefits.]

(5) from the TCA and, to the extent necessary, from food stamp appropriations, provide funds to States choosing the EBT option for (1) reasonable purchase and installation costs (including reimbursements to retailers) of single-function point-of-sale equipment to be used only for Federal/State assistance programs, (2) reasonable start-up purchase and installation costs for telephone equipment and connections to the point-of-sale equipment, and (3) modification of existing EBT systems to the extent necessary to operate Statewide or interstate;

(6) from the TCA, provide funds to implement the EBT option and for (1) start-up training, (2) reasonable one-time costs of converting to a system capable of interstate and law enforcement functions, (3) liabilities assumed by the Secretary under the EBT option (e.g., for replaced benefits), and (4) implementing and expanding a nationwide program for compliance with EBT and retailer rules; and

(7) consult with government, food industry, financial services, and food advocacy representatives in the conversion to EBT as to (1) integrating EBT systems into commercial networks, (2) EBT system security, (3) use of laser scanner technology to ensure that only eligible items are purchased, (4) use of EBT system data to identify fraud, (5) means of ensuring confidentiality, (6) using existing terminals and systems to reduce costs, and (7) using EBT systems for multiple benefits.

Places requirements and conditions on States under the EBT option. States:

(1) must take into account generally accepted operating rules based on commercial technology and the need to permit interstate operations and law enforcement monitoring and investigations;

(2) may use paper-based and other benefit transfer approaches for special-need retailers (located in very rural areas, without access to dependable electricity or regular telephone service, farmers' markets, and house-to-house trade routes);

(3) must purchase and install (or reimburse for) single-function point-of-sale (and related telephone) equipment, usable

only for Federal/State assistance, for retailers that do not have point-of-sale EBT equipment and do not intend to obtain it in the near future [Note: Equipment must be capable of interstate operations (based on commercial operating principles) that permit law enforcement monitoring and be capable of giving recipients access to multiple benefits.];

(4) must purchase (or reimburse for) point-of-sale paper-based or alternative benefit transfer equipment for special-need retailers without this equipment who do not intend to obtain it in the near future (equipment would be usable only for Federal/State assistance);

(5) must use competitive bidding systems in purchasing EBT equipment and cards [Note: States may not have purchase agreements conditioned on buying additional services or equipment, the Secretary must monitor prices paid, and the Inspector General must investigate possible wrongdoing,];

(6) must advise recipients how to promptly report lost, stolen, damaged, improperly manufactured, dysfunctional, or destroyed EBT cards;

(7) must not (following the Secretary's regulations) replace benefits lost due to unauthorized use of an EBT card, but recipients would receive replacement benefits for losses caused by (1) force or threat of force, (2) unauthorized use after the State gets notice a card was lost/stolen, or (3) problems with the EBT system [Note: Except for losses caused by force or threat of force, States must reimburse the Secretary for benefit replacements, and States may obtain reimbursement from service providers for losses caused by system problems.];

(8) may require an explanation from recipients on occasions where they report lost or stolen cards or cards are used for an unauthorized transaction;

(9) must, in appropriate circumstances, investigate and act on (through administrative disqualification or court referral) cases of lost or stolen cards or unauthorized use;

(10) must (1) take into account the needs of law enforcement personnel and the need to permit and encourage technological/scientific advances, (2) ensure security is protected, (3) provide for recipient privacy, ease of EBT card use, and access to and service by retailers, (4) provide for financial accountability and system capability for interstate operations and law enforcement monitoring, (5) prohibit retailer participation unless appropriate equipment is operational and reasonably available to recipients, and (6) provide for monitoring and investigation by law enforcement agencies;

(11) must, on a recipient's request, provide, once a month, a statement of benefit transfers and balances for the preceding month; and

(12) must design systems to timely resolve disputes over errors. [Note: Recipients able to obtain error corrections under the system would not be entitled to a fair hearing.].

Provides that retailers may return equipment provided by the State and obtain equipment with their own funds and that the cost of documents or systems under the EBT option may not be imposed on retailers.

Provides that EBT retailer fraud and related activities be governed by the Food Stamp Act and 18 U.S.C. 1029.

Makes technical and conforming amendments and defines electronic benefit transfer system, retail food store, special-need retail food store, and electronic benefit transfer card.

Conference agreement

The Conference agreement follows the House bill, with an amendment. States are required to implement an electronic benefit transfer system ('on-line' or 'off-line') before October 1, 2002, unless the Secretary waives the requirement because a State agency faces unusual barriers to implementation, and State are encouraged to implement an electronic benefit transfer system as soon as practicable. Subject to Federal standards, States are allowed to procure and implement an electronic benefit transfer system under terms, conditions, and design that they consider appropriate, and a new requirement for Federal procurement standards is added. A requirement is added for electronic benefit transfer standards following generally accepted standard operating rules based on commercial technology, the need to permit interstate operation and law enforcement, and the need to permit monitoring and investigations by authorized law enforcement officials. A requirement that regulations regarding replacement of benefits under an electronic benefit transfer system be similar to those in effect for a paper food stamp issuance system is added. Provisions in the House bill that are retained are: a provision deleting the requirement that electronic benefit transfer systems be cost-neutral in any one year, requirements as to measures to maximize security, and a provision requiring measures to permit electronic benefit systems to differentiate among food items (to the extent practicable). The House bill provision allowing the Secretary to waive Food Stamp Act provisions that prohibit effective implementation of electronic benefit transfer systems is deleted.

12. VALUE OF MINIMUM ALLOTMENT

Present law

The minimum monthly allotment for 1- and 2-person households is set at $10. It is scheduled to rise to $15 in fiscal year 1997 or 1998 (depending on food-price inflation). [Sec. 8(a)]

House bill

Sets the minimum monthly allotment for 1- and 2-person households at $10.

Senate amendment

Same as the House bill.

Conference agreement

The Conference agreement follows the House bill.

13. INITIAL MONTH BENEFIT DETERMINATION

Present law

Recipient households not fulfilling eligibility recertification requirements in the last month of their certification period are allowed a 1-month "grace period" in which to fulfill the requirements before their benefits are pro-rated (reduced) to reflect the delay in meeting recertification requirements. [Sec. 8(c)(2)(B)]

House bill

For those who do not complete all eligibility recertification requirements in the last month of their certification period, but are then determined eligible after their certification period has expired, requires that they receive reduced benefits in the first month of their new certification period (i.e., their benefits would be pro-rated to the date they met the requirements and were judged eligible).

Senate amendment

Same as the House bill.

Conference agreement

The Conference agreement follows the Senate amendment.

14. IMPROVING FOOD STAMP MANAGEMENT

A. QUALITY CONTROL FISCAL SANCTIONS

Present law

States are assessed fiscal sanctions if their "quality control" combined (overpayment and underpayment) error rate for a given fiscal year is higher than the national average for that year. The amount of each State's sanction is determined by using a "sliding scale" so that its penalty assessment reflects the degree to which its combined error rate exceeds the national average tolerance level. In effect, the current system requires that States be sanctioned for a portion of every benefit dollar that exceeds the tolerance level. For example, if the tolerance level were 10% and the State's combined error rate were 12%, or 2 percentage points (20%) above the tolerance level, the State would be assessed a penalty of .2% of benefits issued in the State that year (i.e., 20% of the excess above the threshold). [Sec. 16(c)]

House bill

Requires the assessment of fiscal sanctions if a State's combined error rate is above a tolerance level set at the lowest national average combined error rate ever achieved, plus 1 percentage point. States would be assessed a dollar penalty for each dollar in error above the tolerance level. For example, if a State's combined error rate were 2 percentage points above the lowest ever national average tolerance level, plus 1 percentage point, it would be assessed a penalty of 2% of benefits issued in the State that year.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

B. QUALITY CONTROL ADMINISTRATIVE RULES

Present law

Errors resulting from the application of new regulations are not included in a State's error rate for assessing sanctions during the first 120 days from required implementation of the regulations. [Sec. 16(c)(3)(A)]

Specific time frames are set out for completion of quality control reviews, determining final error rates, and various steps of the appeals process. Administrative law judges are required to consider all grounds for denying a sanction claim against a State, including contentions that a claim should be waived for good cause. [Sec. 16(c)(8)]

For judging to what degree a State should be sanctioned, "good cause" is defined as including: (1) a natural disaster or civil disorder that adversely affects food stamp operations, (2) a strike by State employees who are necessary for food stamp operations, (3) a significant growth in food stamp caseload, (4) a change in the Food Stamp program (or other Federal or State program) that has a substantial adverse impact on the management of the Food Stamp program, and (5) a significant circumstance beyond the control of a State agency. [Sec. 16(c)(9)]

If a State appeals a quality control sanction claim, interest on any unpaid portion of the claim accrues from the date of the decision on the administrative appeal or from a date that is 1 year after the date a bill for the sanction is received, whichever is earlier. [Sec. 13(a)(1)]

House bill

Bars inclusion of errors resulting from the application of new regulations for 60 days (or 90 days at the Secretary's discretion).

Deletes specific time frames for reviews, error rates, and the appeals process. Deletes the directive that administrative law judges consider all grounds for denying a sanction claim against a State.

Deletes the Act's definition of good cause for the quality control system.

Requires that interest on sanction claims begin to accrue from the date of the administrative appeal decision or 2 years after the sanction bill is received, whichever is earlier.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

15. WORK SUPPLEMENTATION OR SUPPORT PROGRAM

Present law

No provisions.

House bill

Permits States having a work supplementation or support program (under which public assistance benefits are provided to employers who hire public assistance recipients and then used to pay part of their wages) to include the cash value of a recipient's household food stamp benefits in the amount paid the employer to subsidize wages paid. Work supplementation/support programs would be required to meet standards set by the Secretary in order to avail themselves of the option to include food stamp benefits. The food stamp benefit value of the supplement could not be considered income for other purposes, and the household of the participating member would not receive regular food stamp allotments while the member was in a work supplementation/support program. States would be required to include any plans for including food stamp recipients in work supplementation or support programs in their State plans.

Senate amendment

Same as the House bill, except (1) a qualified work supplementation/support program may not allow participation of any individual for longer than one year (unless the Secretary approves a longer period), and (2) a qualified work supplementation/support program must be used for hiring and employing new employees.

Conference agreement

The Conference agreement follows the House bill, with an amendment to provide that (1) States must provide a description of how recipients in the program will, within a specific period of time, be moved to employment that is not supplemented or supported and (2) programs not displace employment of those who are not supplemented or supported.

16. OBLIGATIONS AND ALLOTMENTS

Present law

The Food Stamp Act authorizes to be appropriated such sums as are necessary for each fiscal year 1991–1995. [Sec. 18(a)]

House bill

Provides that the amount obligated under the Act will not be in excess of the cost estimate of the Congressional Budget Office for fiscal year 1996, with adjustments for additional fiscal years—in both cases reflecting amendments made by the Personal Responsibility Act.

Requires the Secretary to file reports (each February, April, and July) stating whether there is a need for additional obligational authority and authorizes the Secretary to provide recommendations as to how to equitably achieve spending reductions if allotments must be limited in any fiscal year.

Senate amendment

Authorizes such sums as are necessary through fiscal year 2002.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

17. REAUTHORIZATION OF PUERTO RICO NUTRITION ASSISTANCE PROGRAM

Present law

The Food Stamp Act requires the Secretary to pay specific sums for Puerto Rico's nutrition assistance block grant for fiscal year 1991–1995. The fiscal year 1995 amount is $1.143 billion. [Sec. 19(a)]

House bill

No provision.

Senate amendment

Requires the following payments for Puerto Rico's nutrition assistance block grant: $1.143 billion for each of fiscal year 1995 and fiscal year 1996, $1.182 billion for fiscal year 1997, $1.223 billion for fiscal year 1998, $1.266 billion for fiscal year 1999, $1.310 billion for fiscal year 2000, $1.343 billion for fiscal year 2001, and $1.376 billion for fiscal year 2002.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment to require the following payments for Puerto Rico's block grant: $1.143 billion for fiscal year 1996, $1.182 billion for fiscal year 1997, $1.223 billion for fiscal year 1998, $1.266 billion for fiscal year 1999, $1.310 billion for fiscal year 2000, $1.357 billion for fiscal year 2001, and $1.404 billion for fiscal year 2002.

18. AUTHORITY TO ESTABLISH AUTHORIZATION PERIODS

Present law

No provision.

House bill

Requires the Secretary to establish specific time periods during which retail food stores' and wholesale food concerns' authorization to accept and redeem food stamp coupons (or redeem food stamp benefits through an electronic benefit transfer system) will be valid.

Senate amendment

Permits the Secretary to issue regulations establishing specific time periods during which authorization to accept and redeem food stamp coupons will be valid.

Conference agreement

The Conference agreement follows the House bill.

19. CONDITION PRECEDENT FOR APPROVAL OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

Present law

No provision.

House bill

Provides that no retail food stores or wholesale food concerns be approved for participation in the Food Stamp program unless an Agriculture Department employee (or, whenever possible, a State or local government official designated by the Department) has visited it.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the House bill, with an amendment limiting stores and food concerns that must be visited to those of a type, determined by the Secretary, based on factors that include size, location, and type of items sold.

20. WAITING PERIOD FOR RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS THAT ARE DENIED APPROVAL TO ACCEPT COUPONS

Present law

No provision.

House bill

Provides that retail food stores and wholesale food concerns that have failed to be approved for participation in the Food Stamp program may not submit a new application for approval for 6 months from the date they receive a notice of denial. Current law provisions granting denied retailers and wholesalers a hearing on a refusal are retained.

Senate amendment

Same as the House bill, except that stores and concerns may not submit a new application for 6 months from the date of the denial.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment providing that stores and concerns denied approval because they do not meet the Secretary's approval criteria may not, for at least 6 months, submit a new application. The Secretary is allowed to establish longer waiting periods, including permanent disqualification, that reflect the severity of the basis for denial.

21. DISQUALIFICATION OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

Present law

No provision.

House bill

Requires that a retail food store or wholesale food concern that is disqualified from participation in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) also be disqualified from participating in the Food Stamp program for the period of time it is disqualified from the WIC program.

Senate amendment

Requires the Secretary to issue regulations providing criteria for disqualifying from food stamps retail food stores and wholesale food concerns disqualified from the WIC program. Disqualification must be for the same period as under the WIC program, may begin at a later date, and would not be subject to food stamp administrative/judicial review procedures.

Conference agreement

The Conference agreement follows the Senate amendment with a technical amendment.

22. AUTHORITY TO SUSPEND STORES VIOLATING PROGRAM REQUIREMENTS PENDING ADMINISTRATIVE AND JUDICIAL REVIEW

Present law

No provision.

House bill

Requires that, where a retail food store or wholesale food concern has been permanently disqualified (for its third offense or for certain instances of trafficking), the disqualification period will be effective from the date it receives notice of disqualification, pending administrative and judicial review.

Senate amendment

Permits regulations establishing criteria under which authorization of a retail food store or wholesale food concern may be suspended at the time the store/concern is initially found to have committed a violation that would result in permanent disqualification; the suspension may coincide with the period of administrative/judicial review. The Secretary would not be liable for the value of any lost sales during any suspension/ disqualification period.

Requires notice in suspension cases. Stipulates that a suspension period remains in effect pending administrative/judicial review and that the suspension period be part of any disqualification imposed.

Removes provisions for courts temporarily staying administrative actions against stores, concerns, and States pending judicial appeal.

Conference agreement

The Conference agreement follows the Senate amendment with an amendment providing that any permanent disqualification of a store or concern be effective from the date the notice of disqualification is received. If the disqualification is reversed through administrative or judicial review, the Secretary is not liable for the value of lost sales during the disqualification period.

23. CRIMINAL FORFEITURE

Present law

"Administrative forfeiture" rules allow the Secretary to subject property involved in a program violation to forfeiture to the United States. [Sec. 15(g)]

House bill

Establishes "criminal forfeiture" rules. Requires courts, in imposing sentence on those convicted of trafficking in food stamp benefits, to order that the person forfeit property to the United States (in addition to any other sentence imposed). Property subject to forfeiture would include all property (real and personal) used in a transaction (or attempted transaction) to commit (or facilitate the commission of) a trafficking violation (other than a misdemeanor); proceeds traceable to the violation also would be subject to forfeiture. An owner's property interest would not be subject to forfeiture if the owner establishes that the violation was committed without the owner's knowledge or consent. (p. 246)

Requires that the proceeds from any sale of forfeited properties, and any money forfeited, be used (1) to reimburse the Justice Department for costs incurred in initiating and completing forfeiture proceedings, (2) to reimburse the Agriculture Department's Office of Inspector General for costs incurred in the law enforcement effort that led to the forfeiture, (3) to reimburse Federal or State law enforcement agencies for costs incurred in the law enforcement effort that led to the forfeiture, and (4) by the Secretary to carry out store approval, reauthorization, and compliance activities.

Senate amendment

Removes provisions for administrative forfeiture for property "intended to be furnished" in trafficking cases.

Establishes "criminal forfeiture" rules similar to those in the House bill, but applied only in trafficking cases involving benefits of $5,000 or more. Property subject to forfeiture would include: (1) food stamp benefits, and any property constituting, derived from, or traceable to any proceeds obtained directly or indirectly as the result of the violation and (2) food stamp benefits, and any property used or intended to be used to commit or facilitate the violation.

Food stamp benefits and property subject to criminal forfeiture, any seizure or disposition of the benefits/property, and any administrative/ judicial proceeding relating to the benefits/property would be subject to forfeiture provisions of the Drug Abuse Prevention and Control Act of 1970 (where consistent with Food Stamp Act provisions). [Note: No specific Food Stamp Act provisions for use of the proceeds from forfeited property are included]

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

24. EXPANDED DEFINITION OF "COUPON"

Present law

The Act defines "coupon" to mean any coupon, stamp, or type of certificate issued under the provisions of the Food Stamp Act. [Sec. 3(d)]

House bill

In order to expand the types of items to which trafficking penalties apply, revises the current definition of "coupon" to include authorization cards, cash or checks issued in lieu of coupons, and "access devices" for electronic benefit transfer systems (including electronic benefit transfer cards and personal identification numbers).

Senate amendment

Same as the House bill.

Conference agreement

The Conference agreement follows the Senate amendment.

25. DOUBLED PENALTIES FOR VIOLATING FOOD STAMP REQUIREMENTS

Present law

The disqualification penalty for the first intentional violation of program requirements is 6 months. The penalty for a second intentional violation (and the first violation involving trading of a controlled substance) is 1 year. [Sec. 6(b)(1)]

House bill

Increases the disqualification penalty for a first intentional violation to 1 year. Increases the disqualification penalty for a second intentional violation (and the first violation involving a controlled substance) to 2 years.

Senate amendment

Same as the House bill.

Conference agreement

The Conference agreement follows the Senate amendment.

26. DISQUALIFICATION OF CONVICTED INDIVIDUALS

Present law

Permanent disqualification is required for the third intentional violation of program requirements, the second violation involving trading of a controlled substance, and the first violation involving trading of firearms, ammunition, or explosives. [Sec. 6(b)(1)]

House bill

Adds a requirement for permanent disqualification of persons convicted of trafficking in food stamp benefits where the benefits trafficked have a value of $500 or more.

Senate amendment

No comparable provision.

Conference agreement

The Conference agreement follows the House bill, with a technical amendment.

27. CLAIMS COLLECTION

A. FEDERAL INCOME TAX REFUNDS

Present law

Otherwise uncollected overissued benefits may, except for claims arising out of State agency error, may be recovered from Federal pay or pensions. [Sec. 13(d) and Sec. 11(e)(8)]

House bill

Requires collection of otherwise uncollected overissued benefits, other than those arising out of State agency error, from Federal pay or pensions and from Federal income tax refunds.

Senate amendment

Permits collection of all otherwise uncollected overissued benefits from Federal pay or pensions and from Federal income tax refunds.

Conference agreement

The Conference agreement follows the Senate amendment.

B. AUTHORITY TO COLLECT OVERISSUANCES

Present law

State collection of overissued benefits is limited in certain circumstances. In the case of overissuances due to an intentional program violation, households must agree to repayment by either a reduction in future benefits or cash repayment; States also are required to collect overissuances to these households through other means, such as tax refund or unemployment compensation collections (if a cash repayment or reduction is not forthcoming), unless they demonstrate that the other means are not cost effective. In cases of overissuance because of inadvertent household "error," States must collect the overissuance through a reduction in future benefits—except that households must be given 10 days' notice to elect another means, and collections are limited to 10% of the monthly allotment or $10 a month (whichever would result in faster collection)—and may use other means of collection. In cases of overissuances because of State agency error, States may request repayment or use other means of collection (not including reduction in future benefits). [Sec. 13(b)] States may retain 25% of "non-fraud" collections not caused by State error and 50% of "fraud" collections (increased from 10% and 25% on October 1, 1995). [Sec. 16(a)}

House bill

No provisions.

Senate amendment

Replaces existing overissuance collection rules with provisions requiring States to collect any overissuance of benefits by reducing future benefits, withholding unemployment compensation, recovering from Federal pay or income tax refunds, or any other means—unless the State demonstrates that all of the means are not cost effective. Bars the use of future benefit reductions as a claims collection mechanism if it would cause a hardship on the household (as determined by the State) and limits benefit reductions (absent intentional program violations) to the greater of 10% of the monthly benefit or $10 a month. Provides that States must collect overissued benefits in accordance with State-established requirements for notice, electing a means of payment, and setting a schedule for payment.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment (1) deleting the specific bar against collections in hardship cases and (2) setting the percentage of collections (other than in cases of State agency error) that a State may retain at a uniform 25%.

28. DENIAL OF FOOD STAMP BENEFITS FOR 10 YEARS TO INDIVIDUALS FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN BENEFITS SIMULTANEOUSLY IN 2 OR MORE STATES

Present law

Disqualification periods ranging from 6 months to permanent disqualification are prescribed for intentional violations of Food Stamp program requirements. [Sec. 6(b)]

House bill

Disqualifies from food stamps for 10 years an individual found to have fraudulently misrepresented the individual's place of residence in order to receive food stamp, Medicaid, TANF, or Supplemental Security Income (SSI) benefits in two or more States.

Senate amendment

Disqualifies from food stamps permanently an individual found to have fraudulently misrepresented the individual's place of residence in order to receive food stamps in two or more States.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment disqualifying from food stamps for 10 years an individual found by a State agency or court to have made a fraudulent misrepresentation of identity or residence in order to receive multiple benefits. The conferees note that State agency hearing processes have sufficient recipient protections to warrant a decision to impose a 10-year disqualification in these cases.

29. DISQUALIFICATION RELATING TO CHILD SUPPORT ARREARS

Present law

No provision.

House bill

Disqualifies individuals during any period the individual has an unpaid liability that is under a court child support order, unless the court is allowing delayed payments.

Senate amendment

Same as the House bill, except that States are permitted to apply a child support arrears disqualification and compliance with a child support agency payment plan also exempts individuals from disqualification.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment that *requires* disqualification.

30. ELIMINATION OF FOOD STAMP BENEFITS WITH RESPECT TO FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS

A. DISQUALIFICATION OF FLEEING FELONS

Present law

No provision.

House bill

Disqualifies individuals while they are (1) fleeing to avoid prosecution or custody after conviction for a crime (or crime attempt) which is a felony or (2) violating a condition of parole under Federal or State law.

Senate amendment

Same as the House bill.

Conference agreement

The Conference agreement follows the Senate amendment with a technical amendment.

B. EXCHANGE OF INFORMATION

Present law

Requires State agencies to immediately report to the Immigration and Naturalization Service a determination that a food stamp household member is ineligible for food stamps because the individual is present in the United States in violation of the Immigration and Nationality Act. [Sec. 11(e)(17)]

House bill

Requires State food stamp agencies to make available to law enforcement officers the address of a food stamp recipient if the officer furnishes the recipient's name and notifies the agency that (1) the individual is fleeing to avoid prosecution or custody for a felony crime (or attempt) or the individual has information necessary for the officer to conduct official duties, (2) the location or apprehension of the individual is within the officer's official duties, and (3) the request is made in the proper exercise of official duties.

Senate amendment

Similar to the House bill, requires State food stamp agencies to make available to law enforcement officers the address, social security number, and (when available) photograph of a food stamp recipient if the officer furnishes the recipient's name and notifies the agency as stipulated in the House bill.

Requires State agencies to furnish the Immigration and Naturalization Service with the name of, address of, and identifying information on any individual the agency knows is unlawfully in the United States.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

31. EFFECTIVE DATES

Present law

No provision.

House bill

Except for amendments dealing with the Food Stamp program's quality control system (effective October 1, 1994), the food stamp and commodity distribution program amendments made by the Personal Responsibility Act would be effective October 1, 1995.

Senate amendment

Provides that Food Stamp Act amendments would be effective October 1, 1995.

Conference agreement

The Conference agreement provides that (1) provisions affecting deduction levels are effective October 1, 1996, and (2) all other provisions are effective on enactment.

32. SENSE OF CONGRESS

Present law

No provision.

House bill

Provides that it is the sense of Congress that States operating electronic benefit transfer systems to provide food stamp benefits should operate systems that are compatible with each other.

Senate amendment

No provision.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

33. DEFICIT REDUCTION

Present law

No provision.

House bill

Provides that it is the sense of the House Committee on Agriculture that reductions in outlays resulting from Food Stamp Act (and commodity distribution program) provisions of the Personal Responsibility Act not be taken into account for purposes of Section 252 of the Balanced Budget and Emergency Deficit Control Act (relating to enforcement of "pay-as-you-go" provisions of the Budget Act).

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

34. CERTIFICATION PERIOD

Present law

For households subject to periodic (monthly) reporting of their circumstances, eligibility certification periods must be 6–12 months, except that the Secretary may waive this rule to improve program administration. For households receiving federally aided public assistance or general assistance, certification periods must coincide with the certification periods for the other public assistance. For other households, certification periods generally must be not less than 3 months—but they can be (1) up to 12 months for those consisting entirely of unemployable, elderly, or primarily self-employed persons or (2) as short as circumstances require for those with a substantial likelihood of frequent changes in income or other household circumstances and for any household on initial eligibility determination (as judged by the Secretary). The Secretary may waive the maximum 12-month limit to improve program administration. [Sec. 3(c)]

House bill

No provision.

Senate amendment

Replaces existing provisions as to certification periods with a requirement that certification periods not exceed 12 months—but can be up to 24 months if all adult household members are elderly, disabled, or primarily self-employed.

Requires State agencies to have at least 1 personal contact with each certified household every 12 months.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment allowing certification periods of up to 24 months for households whose adult members are all elderly or disabled and deleting the reference to a "personal" contact.

35. TREATMENT OF CHILDREN LIVING AT HOME

Present law

Parents and their children 21 years of age or younger who live together must apply for food stamps as a single household (thereby reducing aggregate household benefits)—except for children who are themselves parents living with their children and children who are married and living with their spouses. [Sec. 3(i)]

House bill

No provision.

Senate amendment

Removes the existing exception for children who are themselves parents living with their children and children who are married and living with their spouses.

Conference agreement

The Conference agreement follows the Senate amendment.

36. OPTIONAL ADDITIONAL CRITERIA FOR SEPARATE HOUSEHOLD DETERMINATIONS

Present law

Certain persons who live together may apply for food stamps as separate households (thereby increasing aggregate household benefits) if they (1) are unrelated and purchase food and prepare meals separately or (2) are related but are not spouses or children living with their parents (See item 35). In addition, elderly persons who live with others and cannot purchase food and prepare meals separately because of a substantial disability may apply a separate households as long as their co-residents' income is below prescribed limits (165% of the Federal poverty income guidelines). [Sec. 3(i)]

House bill

No provision.

Senate amendment

Permits States to establish criteria that prescribe when individuals living together, and would otherwise be allowed to apply as separate households, must apply as a single household (without regard to common purchase of food and preparation of meals).

Conference agreement

The Conference agreement follows the Senate amendment.

37. DEFINITION OF HOMELESS INDIVIDUAL

Present law

For food stamp eligibility and benefit determination purposes, a "homeless individual" is a person lacking a fixed/regular nighttime residence or one whose primary nighttime residence is a shelter, a residence intended for those to be institutionalized, a temporary accommodation in the residence of another, or a public or private place not designed to be a regular sleeping accommodation for humans. [Sec. 3(s)]

House bill

No provision.

Senate amendment

Provides that persons whose primary nighttime residence is a temporary accommodation in the home of another may only be considered homeless if the accommodation is for no more than 90 days.

Conference agreement

The Conference agreement follows the Senate amendment.

38. STATE OPTIONS IN REGULATIONS

Present law

The Secretary is directed to establish uniform national standards of eligibility for food stamps (with certain variations allowed for Alaska, Hawaii, Guam, and the Virgin Islands) and in other cases (e.g., imposition of monthly reporting requirements). States may not impose any other standards of eligibility as a condition of participation in the program. [Sec. 5(b)]

House bill

No directly comparable provision. [Note: See item 3.]

Senate amendment

Explicitly permits non-uniform standards of eligibility.

Conference agreement

The Conference agreement follows the Senate amendment.

39. EARNINGS OF STUDENTS

Present law

The earnings of an elementary/secondary student are disregarded as income until the student's 22nd birthday. [Sec. 5(d)(7)]

House bill

No provision.

Senate amendment

Requires that earnings of an elementary/secondary student be counted as income once the student turns age 20.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment requiring that earnings be counted for students who are 19 or younger.

40. BENEFITS FOR ALIENS

A. DEEMING SPONSORS' INCOME AND RESOURCES

Present law

A portion of the income and resources of the sponsor of a lawfully admitted alien must be deemed as available to the sponsored alien for 3 years after the alien's entry. Income is deemed to the extent it exceeds the appropriate food stamp income eligibility limit (130% of the Federal income poverty guidelines); liquid resources are deemed to the extent they exceed $1,500. [Sec. 5(i)]

House bill

No directly comparable provision.

Senate amendment

Extends the deeming period for sponsored legal aliens to 5 years from lawful admittance or the period of time agreed to in the sponsor's affidavit, whichever is longer. [Note: See conference comparison for title IV in the House bill and title V in the Senate amendment.]

Conference agreement

The Conference agreement follows the House bill.

B. COUNTING ALIENS' INCOME AND RESOURCES

Present law

The income (less a pro rata share) and all resources of aliens who are ineligible for food stamps under provisions of the Food Stamp Act are counted as income/resources to the rest of the household living with the alien. [Sec. 6(f)]

House bill

No provision.

Senate amendment

Permits States to count all of the income and resources of aliens ineligible for food stamps under the provisions of the Food Stamp Act as income/resources to the rest of the household.

Conference agreement

The Conference agreement follows the Senate amendment.

41. COOPERATION WITH CHILD SUPPORT AGENCIES

A. CUSTODIAL PARENTS

Present law

No provisions.

House bill

No provisions.

Senate amendment

Permits States to disqualify custodial parents of children under the age of 18 who have an absent parent unless the custodial parent cooperates with the State child support agency in establishing the child's paternity and obtaining support for the child and the custodial parent. Cooperation would not be required if the State finds there is good cause (in accordance with Federal standards taking into account the child's best interest). Fees or other costs for services could not be charged.

Conference agreement

The Conference agreement follows the Senate amendment.

B. NON-CUSTODIAL PARENTS

Present law

No provisions.

House bill

No provisions.

Senate amendment

Permits States to disqualify putative or identified non-custodial parents of children under 18 if they refuse to cooperate with the State child support agency in establishing the child's paternity and providing support for the child. The Secretary and the Secretary of Health and Human Services would develop guidelines for what constitutes a refusal to cooperate, and States would develop procedures (using these guidelines) for determining whether there has been a refusal to cooperate. Fees or other costs for services could not be charged. States would be required to provide safeguards to restrict the use of information collected by the child support agency to the purposes for which it was collected.

Conference agreement

The Conference agreement follows the Senate amendment.

42. OPTIONAL COMBINED ALLOTMENT FOR EXPEDITED HOUSEHOLDS

Present law

For households applying after the 15th day of the month, States may provide an allotment that is the aggregate of the initial (pro-rated) allotment and the first regular allotment—but combined allotments must be provided to households applying after 15th of the month who are entitled to expedited service. [Sec. 8(c)(3)]

House bill

No provision.

Senate amendment

Makes provision of combined allotments a State option both for regular and expedited service applicants.

Conference agreement

The Conference agreement follows the Senate amendment.

43. FAILURE TO COMPLY WITH OTHER WELFARE AND PUBLIC ASSISTANCE PROGRAMS

Present law

Households penalized for an intentional failure to comply with a Federal, State, or local welfare program may not, for the duration of the penalty, receive an increased food stamp allotment because their welfare income has been reduced. [Sec. 8(d)]

[Note: This has been interpreted by regulation to apply only to reductions in welfare income due to repayment of overpayments resulting from a welfare violation, although a revision of the regulation is scheduled.]

House bill

[Note: See item 4C.]

Senate amendment

Bars increased food stamp allotments because the benefits of a household are reduced under a Federal, State, or local welfare or public assistance program for failure to perform a required action. In carrying out this requirement, States may, in determining food stamp allotments for the duration of the public assistance reduction, use the household's pre-reduction welfare benefits.

Permits States also to reduce the household's food stamp allotment by up to 25%. If the allotment is reduced for failure to perform an action required under a family assistance block grant program, the State may use the rules and procedures of that program to reduce the food stamp allotment.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment changing references to welfare or public assistance programs to references to mean-tested public assistance programs.

44. ALLOTMENTS FOR HOUSEHOLDS RESIDING IN INSTITUTIONS

Present law

Homeless shelters and residential drug or alcoholic treatment centers may be designated as recipients' authorized representatives. [Note: In the case of residential treatment centers, benefits generally are provided to the center.]

House bill

No provision.

Senate amendment

Permits States to divide a month's food stamp benefits between the shelter/center and an individual who leaves the shelter/center.

Permits States to require residents of shelters/centers to designate the shelter/center as authorized representative.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment deleting homeless shelters from those institutions covered by the amendment.

45. OPERATION OF FOOD STAMP OFFICES

A. STATE PLAN REQUIREMENTS

Present law

States must:

(1) allow households contacting the food stamp office in person during office hours to make an oral/written request for aid and receive and file an application on the same day;

(2) use a simplified, uniform federally designed application, unless a waiver is approved;

(3) include certain, specific information in applications;

(4) waive in-person interviews under certain circumstances (they may use telephone interviews or home visits instead);

(5) provide for telephone contact and mail application by households with transportation or similar difficulties;

(6) require an adult representative of the household to certify as to household members' citizenship/alien status;

(6) provide a method of certifying and issuing benefits to homeless households;

(7) assist households in obtaining verification and completing applications;

(8) not require additional verification of currently verified information (unless there is reason to believe that the information is inaccurate, incomplete, or inconsistent);

(9) not deny an application solely because a non-household member fails to cooperate;

(10) process applications if the household meets cooperation requirements;

(11) provide households (at certification and recertification) with a statement of reporting responsibilities;

(12) provide a toll-free or local telephone number at which households may reach State personnel;

(13) display and make available nutrition information; and

(14) use mail issuance in rural areas where low-income households face substantial difficulties in obtaining transportation (with exceptions for high mail losses). [Sec. 11(e)(2), (3), (14), & (25)]

House bill

No provisions.

Senate amendment

Replaces noted existing State plan requirements with requirements that the State:

(1) establish procedures governing the operation of food stamp offices that it determines best serve households in the State, including those with special needs (such as households with elderly or disabled members, those in rural areas, the homeless, households residing on reservations, and households speaking a language other than English);

(2) provide timely, accurate, and fair service to applicants and participants;

(3) permit applicants to apply and participate on the same day they first contact the food stamp office during office hours; and

(4) consider an application filed on the date the applicant submits an application that contains the applicant's name, address, and signature.

Permits States to establish operating procedures that vary for local food stamp offices to reflect regional and local differences.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

B. APPLICATION AND DENIAL PROCEDURES

Present law

A single interview for determining AFDC and food stamp benefits is required. Food stamp applications generally are required to be contained in public assistance applications, and applications and information on how to apply for food stamps must be provided local general assistance applicants. Applicants (including those who have recently lost or been denied public assistance) must be certified eligible for food stamps based on the information in their public assistance casefile (to the extent it is reasonably verified).

No household may be terminated from or denied food stamps solely on the basis that it has been terminated from or denied other public assistance and without a separate food stamp eligibility determination.

House bill

No provisions.

Senate amendment

Deletes noted existing requirements for single interviews, applications, and food stamp determinations based on public assistance information.

Permits disqualification for food stamps based on another public assistance program's disqualification for failure to comply with its rules or regulations.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

46. STATE EMPLOYEE AND TRAINING STANDARDS

Present law

States must employ agency personnel doing food stamp certifications in accordance with current Federal "merit system" standards. States must provide continuing, comprehensive training for all certification personnel. States may undertake intensive training of certification personnel to ensure they are qualified for certifying farming households. States may provide or contract for the provision of training/assistance to persons working with volunteer or nonprofit organizations that provide outreach and eligibility screening activities. [Sec. 11(e)(6)]

House bill

No provision.

Senate amendment

Deletes noted existing provisions for merit system standards and training.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

47. EXPEDITED COUPON SERVICE

Present law

States must provide expedited benefits to applicant households that (1) have gross income under $150 a month (or are "destitute" migrant or seasonal farmworker households) and have liquid resources of no more than $100, (2) homeless households, and (3) households that have combined gross income and liquid resources less than the household's monthly shelter expenses.

Expedited service means providing an allotment no later than 5 days after application. [Sec. 11(e)(9)]

House bill

No provision.

Senate amendment

Deletes noted existing requirements to provide expedited service to the homeless and households with shelter expenses in excess of their income/resources.

Lengthens the period in which expedited benefits must be provided to 7 business days.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment providing that expedited benefits must be provided in 7 calendar days.

48. FAIR HEARINGS

Present law

No provision.

House bill

No provision.

Senate amendment

Permits households to withdraw fair hearing requests orally or in writing. If it is an oral request, the State must provide a written notice to the household confirming the request and providing the household with another chance to request a hearing.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment providing that permission for households to withdraw fair hearing requests orally or in writing is a State option.

49. INCOME AND ELIGIBILITY VERIFICATION SYSTEM

Present law

States must use the "income and eligibility verification systems" established under Sec. 1137 of the Social Security Act to assist in verifying household circumstances; this includes a system for verifying financial circumstances (IEVS) and a system for verifying alien status (SAVE). [Sec. 11(e)(19) of the Food Stamp Act and Sec. 1137 of the Social Security Act.]

House bill

No provision.

Senate amendment

Makes use of IEVS and SAVE optional with the States.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

50. TERMINATION OF FEDERAL MATCH FOR OPTIONAL INFORMATION ACTIVITIES

Present law

If a State opts to conduct informational ("outreach") activities for the food stamp program, the Federal Government shares half the cost. [Sec. 11(e)(1) & Sec. 16(a)]

House bill

No provision.

Senate amendment

Terminates the Federal share of optional State outreach activities. [Note: Sec. 333(b) makes a technical amendment to Sec. 16(g) of the Food Stamp Act.]

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment that does not terminate the Federal share of optional State outreach activities but bar a Federal share for "recruitment activities."

51. STANDARDS FOR ADMINISTRATION

Present law

The Secretary is required to (1) establish standards for efficient and effective administration of the program, including standards for review of food stamp office hours to ensure that employed individuals are adequately served, and (2) instruct States to submit reports on administrative actions taken to meet the standards. [Sec. 16(b)]

House bill

No provision.

Senate amendment

Deletes provisions on standards for administration.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

52. WAIVER AUTHORITY

Present law

The Secretary may waive Food Stamp Act requirements to the degree necessary to conduct pilot/demonstration projects, but no project may be implemented that would lower or further restrict food stamp income/resource eligibility standards or benefit levels (other than certain projects involving the payment of the average value of allotments in cash and certain work program demonstrations). [Sec. 17(b)(1)]

House bill

No provision.

Senate amendment

Replaces existing waiver authority with authority for the Secretary to waive Food Stamp Act requirements to the extent necessary to conduct pilot/experimental projects, including those designed to test innovative welfare reform, promote work, and allow conformity with other assistance programs.

Requires that any project involving the payment of benefits in the form of cash maintain the average value of allotments for affected households.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

53. AUTHORIZATION OF PILOT PROJECTS

Present law

Existing pilot projects for the payment of food stamp benefits in the form of cash to households composed of elderly persons or SSI recipients are authorized to continue through October 1, 1995, if a State requests. [Sec. 17(b)(1)]

House bill

No provision.

Senate amendment

Extends the authorization for elderly/SSI cash-out projects through October 1, 2002.

Conference agreement

The Conference agreement follows the Senate amendment.

54. RESPONSE TO WAIVERS

Present law

No provisions.

House bill

No provisions.

Senate amendment

Requires that, not later than 60 days after receiving a demonstration project waiver request, the Secretary (1) approve the request, (2) deny the request and explain any modifications needed for approval, (3) deny the request and explain the grounds for denial, or (4) ask for clarification of the request. If a response is not forthcoming in 60 days, the waiver would be considered approved. If a waiver request is denied, the Secretary must provide a copy of the waiver request and the grounds for denial to the House and Senate Agriculture Committees.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

55. PRIVATE SECTOR EMPLOYMENT INITIATIVES

Present law

No provisions.

House bill

[Note: See item 4E.]

Senate amendment

Allows certain States to operate "private sector employment initiatives" under which food stamp benefits could be paid in cash to some participating households. States would be eligible to operate private sector employment initiatives if not less than 50% of the households that received food stamp benefits in the summer of 1993 also received AFDC benefits. Households would be eligible to receive cash payments if an adult member so elects and (1) has worked in unsubsidized private sector employment for not less than the 90 preceding days, (2) has earned not less than $350 a month from that employment, (3) is eligible to receive family assistance block grant benefits (or was eligible when cash payments were first received and is no longer eligible because of earned income), and (4) is continuing to earn not less than $350 a month from private sector employment. States operating a private sector employment initiative for 2 years must provide a written evaluation of the impact of cash assistance (the content of the evaluation would be determined by the State).

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment requiring States that select this option to increase benefits to compensate for State or local sales taxes on food purchases.

56. OPTIONAL BLOCK GRANTS

Present law

No provisions.

House bill

[Note: Sec. 556 (b) of the House bill adds a new section 25 to the Food Stamp Act containing provisions for an optional block grant.]

Allows States that have fully implemented an electronic benefit transfer system to elect an annual block grant to operate a low-income nutrition assistance program in lieu of the food stamp program.

Grants funds to States electing a block grant—States would receive (1) the greater of: the total fiscal year 1994 amount they received as food stamp benefits; or the fiscal years 1992–1994 average they received as food stamp benefits and (2) the greater of: the fiscal year 1994 Federal share of administrative costs; or the fiscal years 1992–1994 average they received as the Federal share of administrative costs. Grant payments would be made at times and in a manner determined by the Secretary.

Requires annual submission of a State plan specifying the manner in which the block grant nutrition assistance program will be conducted. The plan must:

(1) certify that the State has implemented a State-wide electronic benefit transfer system under Food Stamp Act conditions;

(2) designate a single State agency responsible for administration;

(3) assess the food and nutrition needs of needy persons in the State;

(4) limit assistance to the purchase of food;

(5) describe the persons to whom aid will be provided;

(6) assure that assistance will be provided to the most needy;

(7) assure that applicants for assistance have adequate notice and fair hearing rights comparable to those under the regular food stamp program;

(8) provide that there be no discrimination on the basis of race, sex, religion, national origin, or political beliefs; and

(9) include other information as required by the Secretary.

In general, permits block grant payments to be expended only in the fiscal year in which they are distributed to a State. States may reserve up to 5% of a fiscal year's grant to provide assistance in subsequent years, but reserved funds may not total more than 20% of the total grant received for a fiscal year.

Requires States to keep records concerning block grant program operations and make them available to the Secretary and the Comptroller General.

If the Secretary finds there is substantial failure by a State to comply, requires the Secretary to (1) suspend all or part of a grant payment until the State is determined in substantial compliance, (2) withhold all/part of a grant payment until the Secretary determines that there is no long a failure to comply, or (3) terminate the State's authority to operate a nutrition assistance block grant program.

Requires States to provide for biennial audits of block grant expenditures, provide the Secretary with the audit, and make it available for public inspection.

Requires an annual "activities report" comparing actual spending for nutrition assistance in each fiscal year with the spending predicted in the State plan; the report must be made available for public inspection.

Requires that whoever knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery any funds or property provided or financed under a nutrition assistance block grant be fined not more than $10,000, imprisoned for not more than 5 years, or both.

Requires that the State plan provide that there will be no discrimination on the basis of race, sex, religion, national origin, or political beliefs.

Requires that all assistance provided under the block grant be limited to the purchase of food. [Note: Because the State would have fully implemented an electronic benefit transfer system, benefits would be provided through these systems.]

Senate amendment

[Note: Sec. 343(a) of the Senate amendment adds a new section 25 to the Food Stamp Act containing provisions for an optional block grant]

Requires the Secretary to establish a program to make grants to States, in lieu of the food stamp program, to provide food assistance to needy individuals and families, wage subsidies and payments in return for work for needy individuals, funds to operate an employment and training program for needy individuals, and funds for administrative costs incurred in providing assistance.

Grants funds to States electing a block grant—States would receive (1) the greater of: the total fiscal year 1994 amount they received as food stamp benefits; or the fiscal years 1992–1994 average they received as food stamp benefits and (2) the greater of: the fiscal year 1994 Federal share of administrative costs and employment/ training program costs; or the fiscal years 1992–1994 average they received as the Federal share of administrative costs and employment/training program costs. If total allotments for a fiscal year would exceed the amount of funds made available to provide them, the Secretary is required to reduce allotments on a pro rata basis to the extent necessary. Grant payments would be made by issuing 1 or more letters of credit, with necessary adjustments for overpayments and underpayments.

Requires annual submission of a State plan containing information as required by the Secretary. The plan:

(1) must have an assurance that the State will comply with block grant requirements;

(2) must identify a "lead agency" responsible for administration, development of the plan, and coordination with other programs;

(3) must provide that the State will use grant funds as follows:

(a) to give food assistance to needy persons (other than certain residents of institutions);

(b) at State option, to provide wage subsidies and workfare for needy persons;

(c) to administer an employment and training program for needy persons (and provide reimbursement for support services); and

(d) to pay administrative costs incurred in providing assistance;

(4) must describe how the program will serve specific groups of persons (and how that treatment will differ from the regular food stamp program) including the elderly, migrants or seasonal farmworkers, the homeless, those under the supervision of institutions, those with earnings, and Indians;

(5) must provide that benefits be available statewide;

(6) must provide that applicants and recipients are provided with notice and fair hearing rights;

(7) may coordinate block grant assistance with aid under the family assistance block grant;

(8) may reduce food assistance or otherwise penalize persons or families penalized for violating family assistance block grant rules;

(9) must assess the food and nutrition needs of needy persons in the State;

(10) must describe the income and resource eligibility limits established under the block grant;

(11) must establish a system to ensure that no persons receive block grant benefits in more than 1 jurisdiction;

(12) must provide for safeguarding and restricting the use and disclosure of information about recipients; and

(13) must contain other information as required by the Secretary.

Same as the House bill, except that States may reserve up to 10% a year and reserved funds may not total more than 30% of the total grant received.

Requires the Secretary to review and monitor State compliance with block grant rules and State plans. If the Secretary (after notice and opportunity for a hearing) finds that there has been a failure to substantially comply with the State's plan or the provisions of the block grant, the Secretary must notify the State and no further payments would be made until the Secretary is satisfied that there is no longer a failure to comply or that noncompliance will be promptly corrected.

Allows the Secretary (in cases of noncompliance) to impose other appropriate sanctions on States in addition to, or in lieu of, withholding block grant payments; these sanctions may include recoupment of money improperly spent and disqualification from receipt of a block grant. The Secretary also is required to establish procedures for (1) receiving, processing, and determining the validity of complaints about States' failure to comply with block grant obligations and (2) imposing sanctions. In addition, the Secretary is permitted to withhold not more than 5% of a State's annual allotment if the State does not use an "income and eligibility verification system" established under Sec. 1137 of the Social Security Act.

Requires States to arrange for annual independent audits of block grant expenditures. Each annual audit must include an audit of payment accuracy based on a statistically valid sample and be submitted to the State legislature and the Secretary. States must repay any amounts the audit determines have not been expended in accordance with the State plan, or the Secretary can offset amounts against any other amount paid the State under the block grant.

Provides that a State that elects a food assistance block grant option may subsequently reverse that choice only once.

Finds that the Senate has adopted a resolution that Congress should not enact/adopt any legislation that will increase the number of hungry children, that it is not its intent to cause more children to be hungry, that the food stamp program serves to prevent child hunger, and that a State's election for a food assistance block grant should not serve to increase the number hungry children in the State.

Provides that a State's election for a food assistance block grant be permanently revoked 180 days after the Secretary of Health and Human Services has made 2 successive findings (over a 6-year period) that the "hunger rate" among children is significantly higher in a food assistance block grant State than it would have been if the State had not made the choice.

Specifies procedures for a finding that a State's child hunger rate has risen significantly. Every 3 years, the Secretary must develop data and report with respect to any significant increase in child hunger in States that have elected a food assistance block grant. The Secretary must provide the report to States that have elected a block grant and must provide States with a higher child hunger rate with an opportunity to respond. If the State's response does not result in a reversal of the Secretary's determination that the child hunger rate is significantly higher than it would have been without the State's block grant election, the Secretary must publish a determination that the State's block grant choice is revoked.

Requires States to designate a lead administrative agency. The agency must administer (either directly or through other agencies) the food assistance block grant aid, develop the State plan, hold at least 1 hearing for public comment on the plan, and coordinate food assistance block grant aid with other government assistance. In developing the State plan, the lead agency must consult with local governments and private sector organizations so that services are provided in a manner appropriate to local populations.

Provides that nothing in the new food assistance block grant section of the Food Stamp Act entitles anyone to assistance or limits the right of States to impose additional limits or conditions.

Requires that no funds under the food assistance block grant be spent for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building/facility.

Requires that no alien otherwise ineligible to participate in the regular food stamp program be eligible to participate in a food assistance block grant program, and that the income of the sponsor of an alien be counted as in the regular food stamp program.

Requires that (1) no person be eligible to receive food assistance block grant benefits if they do not meet regular food stamp program work requirements and (2) that each State operating a food assistance block grant implement an employment and training program under regular food stamp program rules.

Bars the Secretary from providing assistance for any program, project, or activity under a food assistance block grant if any person with operational responsibilities discriminates because of race, religion, color, national origin, sex, or disability. Also provides for enforcement through title VI of the Civil Rights Act.

Requires that, in each fiscal year, at least 80% of Federal funds expended under a State's block grant be for food assistance and not more than 6% be for administrative expenses. A State could provide food assistance to meet the 80% requirement in any manner it determines appropriate (such as electronic benefit transfers, coupons, or direct provision of commodities), but "food assistance" would be limited to assistance that may only be used to obtain food (as defined in the Food Stamp Act).

Provides that the Secretary may conduct research on the effects and costs of a State food assistance block grant program.

Conference agreement

The Conference agreement follows the House bill with and amendment. States that meet one of three conditions may elect to receive an annual block grant to operate a food assistance program for needy persons in lieu of the food stamp program. Eligible States may opts for a block grant at any time, but, if the State chooses to withdraw from the block grant or is disqualfied, it may not again opt for a block grant. Eligible States include: (1) those that have fully implemented a statewide electronic benefit transfer system, (2) those for which the dollar value of erroneous benefit and eligibility determinations (overpayments, payments to ineligibles, and underpayments) in the food stamp program or their food assistance block grant program is 6% of benefits issued or less (a 'payment error rate' of 6% or less), and (3) those with a payment error rate higher than 6% that agree to contribute, from non–Federal sources, a dollar amount equal to the difference between their payment error rate and a 6% rate to pay for benefits and administration of their food assistance block grant program. A States's payment error rate for block grant purposes is the most recent rate available, as determined by the Secretary.

States electing a block grant would be provided an annual grant equal to: (1) the greater of the fiscal year 1994 amount they received as food stamp benefits, or the 1992–1994 average they received as food stamp benefits and (2) the greater of the fiscal year 1994 Federal share of administrative costs, or the 1992–1994 average they received as the Federal share of administrative costs. However, grants to States with payment error rates above 6 % would be reduced by the amount they are required to contribute (i.e., the dollar amount equal to the difference between their payment error rate and a 6% rate). In general, block grant payments must be expended in the fiscal year for which they were distributed; but States may reserve up to 10% a year, up to a total of 30% of the block grant. If total allotments for a fiscal year would exceed the amount of funds made available to provide them, the Secretary is required to reduce allotments or a pro rata basis to the extent necessary. Grant payments would be made by issuing letters of credit.

Block grant funding may only be used for food assistance and administrative costs related to its provision, and, in each fiscal year, not more than 6% of total funds expended (including State funds required to be spent) may be used for administrative costs.

Each participating block grant State is required to maintain a food stamp quality control program to measure erroneous benefit and eligibility determinations, and block grant States would continue to be subject to the food stamp program's quality control system (including eligibility for incentive payments and imposition of fiscal sanction for very high payment error rates). Each participating State is required to implement an employment and training program under Food Stamp Act terms and conditions and is eligible to receive Federal funding for employment and training activities (in addition to the food stamp block grant amount).

In order to receive a block grant, a State must annually submit a State plan for approval by the Secretary. The State plan must: (1) identify a lead administering agency, (2) describe how and to what extent the State's program serves specific groups (e.g., the elderly, migrant and seasonal farmworkers, the homeless, those with earnings, Indians) and how the treatment differs from their treatment under the food stamp program, (3) provide that benefits are available statewide, (4) provide for notice and an opportunity for a hearing to those adversely affected, (5) assess the food and nutrition needs of needy persons in the State, (6) describe the State's eligibility standards for assistance under the block grant program, (7) establish a system for exchanging information with other States to verify recipients' identity and the possible receipt of benefits in another State, (8) provide for safeguarding and restricting the use and disclosure of information about recipients, and (9) other information required by the Secretary.

Eligibility for assistance under the block grant is determined by the State, and there is no individual entitlement to assistance. However, certain Federal rules apply: (1) aliens who would not be eligible under the food stamp program are not eligible for block grant aid; and (2) persons and households who would be ineligible under the food stamp program's work rules are not eligible for block grant aid.

If the Secretary finds that there has been a failure to comply with provisions of the block grant or the State's approved plan or finds that, in the operation of any program or activity for which assistance is provided, there is a State failure to comply substantially with block grant provisions—the Secretary must withhold funding, as appropriate, until satisfied there is no longer a failure to comply or that the noncompliance will be promptly corrected. In addition, the Secretary may impose other appropriate penalities, including recoupment of improperly spent money and disqualification from the block grant. States must be provided notice and an opportunity for a hearing in this process.

The Secretary is authorized to conduct research on the effects and costs of a State food assistance block grant.

57. SPECIFIC PERIOD FOR PROHIBITING PARTICIPATION OF STORES BASED ON LACK OF BUSINESS INTEGRITY

Present law

No provision.

House bill

No provision.

Senate amendment

Authorizes the Secretary to issue regulations establishing specific time periods during which retailers/wholesalers that have been denied approval or had approval withdrawn on the basis of "business integrity and reputation" may not submit a new application for approval. The periods established would be required to reflect the severity of the business integrity infractions on which the denial/withdrawal was based.

Conference agreement

See Item #20 above.

58. INFORMATION FOR VERIFYING ELIGIBILITY FOR AUTHORIZATION

Present law

No provision.

House bill

No provision.

Senate amendment

Permits the Secretary to require that retailers and wholesalers seeking approval submit relevant income and sales tax filing documents. Permits regulations requiring retailers and wholesalers to provide written authorization for the Secretary to verify all relevant tax filings and to obtain corroborating documentation from other sources in order to verify the accuracy of information provided by retailers and wholesalers.

Conference agreement

The Conference agreement follows the Senate amendment.

59. BASES FOR SUSPENSIONS AND DISQUALIFICATIONS

Present law

No provision.

House bill

No provision.

Senate amendment

Requires criteria for finding violations by retailers and wholesalers (and their suspension or disqualification) on the basis of evidence including on-site investigations, inconsistent redemption data, or electronic benefit transfer system transaction reports.

Conference agreement

The Conference agreement follows the House bill. The Conferees note that the Secretary currently has the authority contained in the Senate amendment.

60. PERMANENT DEBARMENT OF RETAILERS WHO INTENTIONALLY SUBMIT FALSIFIED APPLICATIONS

Present law

No provision.

House bill

No provision.

Senate amendment

Requires regulations permanently disqualifying retailers and wholesalers that knowingly submit an application for approval that contains false information about a substantive matter. A permanent disqualification for a knowingly false application would be subject to administrative and judicial review, but the disqualification would remain in effect pending the review.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment permitting the Secretary to disqualify a store or concern, including permanently, upon knowing submission of false information on an application.

61. CATEGORICAL ELIGIBILITY

Present law

Households in which all members are recipients of AFDC are categorically eligible for food stamps. [Sec. 5(a)]

Child support payments received by a household and excluded under the AFDC program may be disregarded for food stamps, at State option and expense. [Sec. 5(d)(13)]

Household members who are AFDC recipients are considered to have met food stamp resource (asset) eligibility standards. [Sec. 5(j)]

Persons who are AFDC recipients are exempt from food stamp rules barring eligibility to most postsecondary students. [Sec. 6(e)]

In general, food stamp eligibility is barred to those with total (gross) household income above 130% of the Federal income poverty guidelines. [Sec. 5(c)]

Political subdivisions electing to operate workfare programs for food stamp recipients may comply with food stamp requirements by operating a workfare program under title IV of the Social Security Act. [Sec. 20(a)]

Households exempt from food stamp work rules because of participation in an AFDC community work experience program are subject to a limit on the number of hours of work—their cash assistance plus food stamps, divided by the minimum wage (but no person can be required to work more than 120 hours a month). [Sec. 20(a)]

House bill

No provision. [Note: TANF households would presumably be categorically eligible for food stamps under existing provisions of law.]

No provision. [Note: TANF recipients would presumably be considered to have met food stamp resource standards under existing provisions of law.]

No provision. [Note: TANF recipients would presumably not be exempt from food stamp postsecondary student rules under existing provisions of law.]

Senate amendment

Provides that households in which all members are recipients of benefits under a State's family assistance block grant program be categorically eligible for food stamps, if the Secretary determines that the program complies with Secretarial standards that ensure that State program standards are comparable to or more restrictive than those in effect June 1, 1995.

Deletes the existing provision for a State-option child support disregard. [Note: A separate provision (Sec. 5(m) of the Food Stamp Act) providing for State funding of the disregard is not deleted.]

Provides that persons receiving benefits under a State's family assistance block grant program will be considered to have met food stamp resource eligibility standards, if the Secretary determines that the program complies with Secretarial standards that ensure that State program standards are comparable to or more restrictive than those in effect June 1, 1995.

Provides that persons receiving benefits under a State's family assistance block grant program are exempt from food stamp rules barring eligibility to most postsecondary students, if the Secretary determines that the program complies with Secretarial standards that ensure that State program standards are comparable to or more restrictive than those in effect June 1, 1995.

Provides that households may not receive food stamp benefits as the result of eligibility under a State's family assistance block grant program unless the Secretary determines that households with income above 130% of the poverty guidelines are not eligible for the State's program—notwithstanding any other provision of the Food Stamp Act.

Deletes the existing provision allowing compliance with food stamp workfare rules by operating a workfare program under title IV of the Social Security Act.

Deletes the existing rule placing limits on hours worked for food stamp recipients in community work experience programs.

Makes various technical amendments to the Food Stamp Act conforming its existing references to the AFDC program to cite the new family assistance block grant program.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment deleting references to standards comparable to June 1, 1995, and revising various amendments conforming Food Stamp Act references to the AFDC program to the new family assistance block grant program.

62. PROTECTION OF BATTERED INDIVIDUALS

Present law

No provision. [Note: Certain work rules contain a "good cause" exemption.]

House bill

No provision.

Senate amendment

In the case of individuals who were battered or subjected to extreme cruelty, permits States to exempt them from the following provisions of food stamp law (or modify their application) if their physical, mental, or emotional well-being would be endangered:

(1) the requirement that the income and resources of a sponsor of an alien be deemed to the sponsored alien;

(2) the requirement that custodial parents cooperate with child support agencies (as added by the Senate amendment); and

(3) all work requirements (including the new work requirement added by the Senate amendment).

Conference agreement

The Conference agreement follows the House bill. The conferees note that the Food Stamp Act already provides protection to battered individuals in the application of child support enforcement and work rules.

63. RECONCILIATION PROVISIONS

A. TRANSITIONAL HOUSING

Present law

Payments form regular welfare benefits made on behalf of households in transitional housing are disregarded as income. [Sec. 5(k)]

House bill

No provision.

Senate amendment

Deletes disregard of transitional housing payments.

Conference agreement

The Conference agreement follows the Senate amendment.

B. AMERICAN SAMOA

Present law

No provision. [Note: A food assistance program for American Samoa is supported under provisions of law granting Secretarial discretion to extend Agriculture Department programs to American Samoa.]

House bill

No provision.

Senate amendment

Provides for funding of not more than $5.3 million a year through fiscal year 2002 for a nutrition assistance program in American Samoa.

Conference agreement

The Conference agreement follows the Senate amendment.

C. ASSISTANCE FOR COMMUNITY FOOD PROJECTS

Present law

No provision.

House bill

No provision.

Senate amendment

Authorizes $2.5 million a year for community food project grants to meet the food needs of low-income people, increase the self-reliance of communities in providing for their own food needs, and promote comprehensive responses to local food, farm, and nutrition issues.

Conference agreement

The Conference agreement follows the Senate amendment, with an amendment making the funding for community food projects mandatory.

COMMODITY DISTRIBUTION

1. SHORT TITLE

Present law

The Emergency Food Assistance Act (EFAA), The Hunger Prevention Act of 1988, The Commodity Distribution Reform Act and WIC Amendments, The Charitable Assistance and Food Bank Act of 1987, The Food Security Act of 1985, The Agriculture and Consumer Protection Act of 1973, and The Food, Agriculture, Conservation, and Trade Act of 1990.

House bill

Combines several existing commodity donation programs and authorities under one title, the *Commodity Distribution Act of 1995*.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the House bill with an amendment striking the House provision and replacing it with a provision combining the emergency food assistance program (TEFAP) with the soup kitchen/food bank program into one program to be known as the TEFAP. The revised TEFAP is reauthorized through 2002, and the Secretary is required to purchase $300 million of commodities each year through 2002 for distribution through the TEFAP. The requirement to purchase $300 million of commodities is included in the Food Stamp Act authorization for appropriations.

2. AVAILABILITY OF COMMODITIES

Present law

Requires the Secretary to purchase a variety of nutritious and useful commodities using the resources of the CCC or Section 32 to supplement commodities acquired from the excess inventories of CCC for distribution to emergency feeding organizations. [Sec. 214(c) of Emergency Food Assistance Act (EFAA)]

In addition to commodities donated from excess CCC holdings, authorizes the Secretary to donate Section 32 commodities to eligible recipient agencies participating in TEFAP. [Sec. 202(c)]

Requires the Secretary to make available to eligible recipient agencies, CCC commodities in excess of those needed to meet domestic and international obligations and market development and food aid commitments and to carry out farm price and income stabilization features of the AAA of 1938, the AA of 1949, and the CCC Charter. [Sec. 202(a), EFAA]

House bill

For fiscal years 1996–2000, authorizes the Secretary of Agriculture to purchase a variety of nutritious and useful commodities to distribute to the States for purposes laid out in the subtitle.

Similar to current law, but also authorizes the use of Section 32 *funds* not otherwise used or needed, to purchase, process, and distribute commodities for purposes under the new program.

Leaves current general authority untouched; maintains EFAA requirement but adds language stipulating that donations are to be in addition to authorized Section 32 donations.

Senate amendment

Extends existing law purchasing authorities through fiscal year 2002.

Conference agreement

See Item #1 above.

3. BASIS FOR COMMODITY PURCHASES

Present law

Requires that commodities made available under the EFAA include a variety of items most useful to eligible recipient agencies, including diary products, wheat and wheat products, rice, honey, and cornmeal. [Sec. 202(d), EFAA]

House bill

Requires the Secretary to determine the types, varieties, and amounts of commodities purchased under this subtitle, and to make such purchases, to the maximum extent practicable and appropriate, on the basis of agricultural market conditions, State and distributing agency preferences and needs, and the preferences of recipients.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

4. STATE AND LOCAL SUPPLEMENTATION OF COMMODITIES

Present law

Requires the Secretary to establish procedures by which State and local agencies, charitable institutions, or other person may supplement the commodities distributed under TEFAP for use by emergency feeding organizations with donations of nutritious and wholesome commodities. [Sec. 203D(a), EFAA]

Allows States and emergency feeding organizations to use TEFAP funds, equipment, structures, vehicles, and all other facilities and personnel involved in the storage, handling, and distribution of TEFAP commodities to store, handle, or distribute commodities donated to supplement TEFAP commodities. [Sec. 203D(b), EFAA]

Requires States and emergency feeding organizations to continue to use volunteer workers and commodities and foods donated by charitable and other organizations, to the maximum extent practical, in operating TEFAP.

House bill

Similar to current law except that supplementation applies to all programs eligible to receive commodities under the new program, not just TEFAP.

Similar to current law except it allows use of these sources to all programs eligible to participate in the new program (not just TEFAP), and explicitly identifies the funds that States and eligible agencies may use to help with supplemental commodities as those appropriated for administrative costs under the new Section 519(b).

Same as current law, except substitutes recipient agencies for emergency feeding organizations to reflect expansion of provisions to cover other commodity donation programs as well as TEFAP.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

5. STATE PLAN

Present law

Requires Secretary to expedite the distribution of commodities to agencies designated by the Governor, or directly distribute commodities to eligible recipient agencies engaged in national commodity processing; allows States to give priority to donations to existing food bank networks serving low-income households. Requires States to expeditiously distribute commodities to eligible recipient agencies, and to encourage distribution to rural areas. Also requires States to distribute commodities only to agencies that serve needy persons and to set their own need criteria, with the approval of the Secretary. [Sec. 203B(a) and (c) of EFAA]

House bill

Requires that States seeking commodities under this program submit a plan of operation and administration every four years for approval by the Secretary and allows amendment of the plan at any time.

Requires that, at a minimum, the State receiving commodities include in its plan:

designation of the State agency responsible for distributing commodities;

the plan of operation and administration to expeditiously distribute commodities in amounts requested by eligible recipient agencies;

the standards of eligibility for recipient agencies; and

the individual or household eligibility standards for commodity recipients, which shall require that they be needy, and residing in the geographic location served by the recipient agency.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the House bill.

6. ADVISORY BOARD

Present law

No provision.

House bill

Requires the Secretary to encourage States to establish advisory boards consisting of representatives of all interested entities, public and private, in the distribution of commodities.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the House bill.

7. COOPERATIVE AGREEMENTS/TRANSFERS

Present law

Permits States receiving TEFAP commodities to enter into cooperative agreements with agencies of other States to jointly provide commodities serving eligible recipients from each State in a single area, or to transfer commodities. [Sec. 203B(d)]

House bill

Similar to current law, except adds language specifying that the State may advise the Secretary of such agreements and transfers. Note: Because the new commodity distribution program covers more than TEFAP agencies, this represents a new provision for other recipient agencies now receiving commodities (e.g. CSFP, charitable institutions).

Senate amendment

No provision.

Conference agreement

See Item #1 above.

8. ALLOCATION OF COMMODITIES TO STATES

Present law

Requires Secretary to allocate commodities purchased for TEFAP to States in the following proportions:

60% of the value of commodities available based on each State's proportion of the national total of persons with incomes below the poverty line; and

40% based on each State's proportion of the national total of the average monthly number of unemployed persons.

House bill

Similar to current law as relates to allocation of TEFAP commodities. CSFP commodities are exempted from the allocation method, however, other recipient agencies currently receiving commodities under authority other than the EFAA (e.g. charitable institutions) are covered by the allocation formula.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

9. NOTIFICATION

Present law

Requires the Secretary to notify each State of the amount of commodities it is allotted to receive. Requires each State to notify the Secretary promptly if it will not accept commodities available to it, and requires the Secretary to reallocate and distribute such commodities as he deems appropriate and equitable. Further requires the Secretary to establish procedures to permit State to decline portions of commodity allocations during each fiscal year and to reallocate and distribute such commodities, as deemed appropriate and equitable. [Sec. 214(g), EFAA]

House bill

Same as current law, except applies to all eligible agencies receiving commodities, not just TEFAP agencies.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

10. DISASTERS

Present law

Permits the Secretary to request that States consider assisting other States where substantial numbers of persons have been affected by drought, flood, hurricane or other natural disasters by allowing the Secretary to reallocate commodities to those States affected by such disasters. [Sec. 214(g), EFAA]

House bill

Same as current law.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

11. NATIONAL COMMODITY PROCESSING

Present law

Requires through fiscal year 1995 that the Secretary encourage agreements with private companies for reprocessing into end-use products those commodities donated at no charge to nutrition programs. [Sec. 1114(a)(2)(A) of Agriculture and Food Act of 1981]

House bill

No provision.

Senate amendment

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

Conference agreement

The Conference agreement follows the Senate amendment.

12. PURCHASES AND TIMING

Present law

Requires that in each fiscal year, the Secretary purchase commodities at times and under conditions determined appropriate; deliver such commodities at reasonable intervals to States (but no later than the end of the fiscal year), based on the allocation formula, and entitles each State to the additional commodities purchased for TEFAP in amounts based on the allocation formula. [Sec. 214(h), EFAA]

House bill

Similar to current law except for reference to CSFP, deletion of language relating to "additional" commodities, and requirement that commodities be delivered by December 31 of the following fiscal year.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

13. PRIORITY SYSTEM FOR STATE DISTRIBUTION OF COMMODITIES

A. EMERGENCY FEEDING ORGANIZATIONS

Present law

Requires States to give priority for commodities to emergency feeding organizations if sufficient commodities are not available to meet requests of all eligible agencies, and encourages States to distribute commodities to rural areas. [Sec. 203B(b), EFAA]

House bill

Requires that in distributing commodities allocated under this section for other than CSFP, the State agency offer its full allocation of commodities to emergency feeding organizations.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

B. CHARITABLE INSTITUTIONS

Present law

No provision.

House bill

Permits States agencies to distribute commodities that are not able to be used by emergency feeding organizations to charitable institutions (excluding penal institutions) that do not receive commodities as emergency feeding organizations.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

C. OTHER ELIGIBLE AGENCIES

Present law

No provision.

House bill

Permits the State agency to distribute commodities that are not able to be used by emergency feeding organizations or other charitable institutions to other eligible recipient agencies not receiving commodities under the previous distributions.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

14. INITIAL PROCESSING COSTS

Present law

Permits the Secretary to use CCC funds to pay the cost of initial processing and packaging of commodities distributed under this Act into forms and quantities the Secretary determines are suitable for use by individual households or institutional use. Permits payment in the form of commodities equal in value to the cost, and requires the Secretary to ensure that such payments in kind do not displace commercial sales. [Sec. 203A, EFAA]

House bill

Similar to present law, except substitutes term "eligible recipient agencies" for "institutional use."

Senate amendment

No provision.

Conference agreement

See Item #1 above.

15. ASSURANCES; ANTICIPATED USE

Present law

Requires the Secretary to take precautions to assure that eligible recipient agencies and persons receiving commodities do not diminish their normal expenditures for food because of receipt of commodities, and to ensure that commodities made available under the Act do not displace commercial sales. Prohibits Secretary from donating commodities in a quantity or manner that will substitute for agricultural produce that otherwise would be purchased in the market. Requires Secretary to submit a report to the Congress each year on whether and to what extent displacement or substitution is occurring. [Sec. 203C(a)]

House bill

Similar to current law but does not refer to individual displacement or substitutions or prohibit donation in a quantity or manner that might interfere with market sales. Also sets December 1997, and at least every two years thereafter as the dates for displacement reports.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

16. WASTE

Present law

Requires that the Secretary purchase and distribute commodities in quantities that can be consumed without waste, and prohibits eligible recipient agencies receiving commodities under this Act from receiving commodities in excess of anticipated use (based on inventory records and controls), or in excess of their ability to accept and store. [Sec. 203C(b)]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

17. AUTHORIZATION OF APPROPRIATIONS

A. COMMODITY PURCHASES

Present law

Authorizes $175 million for fiscal year 1991, $190 million for fiscal year 1992, and $220 million for each of fiscal year 1993–1995 to purchase, process and distribute additional commodities to TEFAP agencies. [Sec. 214(e)]

House bill

Authorizes $260 million annually for each of fiscal years 1996 through 2000 to purchase, process, and distribute commodities to States for distribution to eligible recipient agencies, which include charitable institutions and CSFP agencies, as well as TEFAP agencies.

Senate amendment

Extends funding authority for commodity purchases at $220 million annually through fiscal year 2002.

Conference agreement

See Item #1 above.

B. ADMINISTRATIVE FUNDING

Present law

Authorizes $50 million for fiscal year 1991–95 for the Secretary to make available to States for State and local payments of costs associated with the distribution of commodities by eligible recipient agencies. Requires Secretary to allocate funds to States on advance basis in the same proportion as the proportion each State receives of allocated commodities, and requires the Secretary to reallocate funds not able to be used by a State to other States in an appropriate and equitable manner. Permits States to use funds for costs associated with the distribution of additional commodities purchased for the program and for soup kitchens and food banks. [Sec. 204(a)(1)]

House bill

Authorizes $40 million annually for each of fiscal years 1996 through 2000 for payments to States and local agencies (except for the CSFP) for the costs associated with transporting storing, and handling commodities other than those distributed to CSFP agencies. Same as current law with respect to allocations and reallocations, and advanced funding. No specific reference to soup kitchens and food banks, which are included as eligible recipient agencies.

Senate amendment

Extends authority for administrative funding at $50 million annually through fiscal year 2002.

Conference agreement

The Conference agreement follows the Senate amendment with an amendment providing that administrative funds may be used for processing, transporting, or distributing commodities other than TEFAP commodities.

18. LOCAL ADMINISTRATIVE PAYMENTS

Present law

Requires each State to make available not less than 40% of the funds it receives for administrative costs in each fiscal year to pay for, or provide advance payments to eligible recipient agencies, for allowable expenses incurred by such agencies in distributing commodities to needy persons. Defines "allowable expenses" to include the costs of transporting, storing, handling, repackaging and distributing commodities after receipt by the eligible recipient agency; costs associated with eligibility, verification, and documentation of eligibility; costs of providing information to commodity recipients on appropriate storage and preparation of commodities; and costs of recordkeeping, auditing, and other required administrative procedures. [Sec. 204(a)(2), EFAA]

House bill

Same as current law except also applies to non–TEFAP agencies.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

19. STATE COVERAGE OF LOCAL COSTS

Present law

Requires that amounts of funding that States use to cover the allowable expenses of eligible recipient agencies be counted toward the amount a State must make available from administrative funding provided under this Act for eligible recipient agencies. [Sec. 204(a)(2), EFAA]

House bill

Same as present law except that it references the CSFP, which is excluded from this rule.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

20. FINANCIAL REPORTS

Present law

Requires States receiving funds to submit financial reports on a regular basis to the Secretary on the use of such funds and prohibits any such funds from being used by States for costs other than those used to the distribution of commodities by eligible recipient agencies. [Sec. 204(a)(3), EFAA]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

21. NON–FEDERAL MATCHING FUNDS

Present law

Requires that each State receiving administrative funds under this subsection provide cash or in-kind contributions from non-Federal sources in an amount equal to the amount of Federal administrative funds it receives that are not distributed to eligible recipient agencies or used to cover the expenses of such agencies. Permits States to receive administrative funding prior to satisfying the matching requirement, based on their estimated contribution, and requires the Secretary to periodically reconcile estimated and actual contributions to correct for overpayments and underpayments. [Sec. 204(a)(4), EFAA]

House bill

Same as present law, except excludes administrative funds distributed for the CSFP from the non-Federal matching requirements and rules.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

22. FEDERAL CHARGES

Present law

Prohibits any charge against the appropriations authorized by this section for the value of commodities donated for the purposes of this Act, or for the funds used by the CCC for the costs of initial processing, packaging, and delivery of program commodities to the States. [Sec. 204(b), EFAA]

House bill

Similar to present law except it applies the prohibition to bonus donations of Section 32 and CCC commodities, as well as those bought for the program.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

23. STATE CHARGES

Present law

Prohibits States from charging for commodities made available to eligible recipient agencies and from passing along the cost of matching requirements. [Sec. 204(a)(5), EFAA]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

See Item #1 above.

24. MANDATORY FUNDING FOR NUTRITION PROGRAM COMMODITIES

Present law

For each of fiscal years 1994–1996, requires $230,000 of Treasury funds not otherwise appropriated to be provided to the Secretary to purchase, process and distribute commodities that are low in saturated fats, sodium, and sugar, and a good source of calcium, protein, and other nutrients to 2 States, selected by the Secretary, to carry out a three year project to improve the health of low-income participants of TEFAP. Requires that commodities be easy for low-income families to store, use, and handle, and include low-sodium peanut butter, low-fat and low sodium cheeses and canned meats, fruits, and vegetables. Also requires that $5000 of the amount provided be given to each of the participating States to help with administrative costs. [Sec. 13962 of OBRA, 1993]

House bill

No provision.

Senate amendment

Extends this requirement through fiscal year 2002.

Conference agreement

The Conference agreement follows the House bill.

25. COMMODITY SUPPLEMENTAL FOOD PROGRAM (CSFP)—AUTHORIZATION

Present law

For each of fiscal years 1991–1995, authorizes the Secretary to purchase and distribute sufficient agricultural commodities with appropriated funds to maintain the traditional level of assistance for food programs including the supplemental food programs for women, infants, children, and the elderly. [Sec. 4(a), Agriculture and Consumer Protection Act of 1973]

House bill

Requires that $94.5 million of the amount appropriated for programs under this subtitle for the period fiscal year 1996–2000 be used each fiscal year to purchase and distribute commodities to supplemental feeding programs for women, infants, and children, or elderly individuals participating in the commodity supplemental food program.

Senate amendment

Extends appropriations authority through fiscal year 2002.

Conference agreement

This provision was dropped from the Reconcilation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

26. CSFP ADMINISTRATIVE FUNDING

Present law

Requires the Secretary to provide administrative funds to State and local agencies administering the CSFP for each of fiscal years 1991–1995. Authorizes appropriations in an amount equal to not more than 20% of the value of commodities purchased for the program. [Sec. 5(a), Agriculture and Consumer Protection Act of 1973]

Defines administrative costs to include expenses for information and referral, operation, monitoring, nutrition education, start-up costs, and general administration (including staff, warehouse, and transportation personnel, insurance and administration of the State or local office. [Sec. 5(c), Agriculture and Consumer Protection Act of 1973]

House bill

Requires that not more than 20% of the funds made available for commodity purchase and distribution for the CSFP be made available to States for the State and local payments of costs associated with the distribution of commodities by CSFP agencies.

Senate amendment

Extends present law authority through fiscal year 2002.

Conference agreement

The Conference agreement follows the Senate amendment.

27. CSFP—COMMODITY PURCHASES AND ADVANCE WARNING

Present law

Permits the Secretary to determine the types, varieties, and amounts of commodities purchased for the CSFP, but requires the Secretary to report to the House and Senate Agriculture Committees plans for significant changes from commodities available or planned at the beginning of the fiscal year before implementing such changes.

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

28. CHEESE AND NONFAT DRY MILK

Present law

In each of fiscal years 1991–1995, the CCC is required to provide at least 9 million pounds of cheese and 4 million pounds of nonfat dry milk (to the extent inventory levels permit), for the Secretary to use, before the end of each fiscal year, to carry out the CSFP. [Sec. 5(d)(2), Agriculture and Consumer Protection Act of 1973]

House bill

Implements this present law provision for fiscal years 1996–2000, otherwise it is exactly the same as present law.

Senate amendment

Extends present law provision through fiscal year 2002.

Conference agreement

The Conference agreement follows the Senate amendment.

29. ADDITIONAL CSFP SITES

Present law

Requires the Secretary to approve additional sites each fiscal year, including sites serving the elderly, in areas where the program does not operate to the full extent that applications can be approved within the funding available, and without reducing participation levels (including the elderly) in areas where the program is in effect. [Sec. 5(f), Agriculture and Consumer Protection Act of 1973]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

30. ADDITIONAL RECIPIENTS

Present law

Permits a local agency to serve low-income elderly persons, with the approval of the Secretary, if it determines that the amount of assistance it receives is more than is needed to provide assistance to women, infants and children. [Sec. 5(g), Agriculture and Consumer Protection Act of 1973]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

31. COMMODITY PRICE INCREASES

Present law

Requires the Secretary to determine the decline in the number of persons able to be served by the CSFP if the price of one or more commodities purchased for the program is significantly higher than expected; to promptly notify State agencies operating programs of the decline; and ensure that State agencies notify local agencies of the decline. [Sec. 5(j) (1) and (2), Agriculture and Consumer Protection Act of 1973]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

32. AFFECT OF CSFP COMMODITIES ON OTHER RECIPIENT AGENCIES

Present law

No provision.

House bill

Stipulates that commodities distributed to CSFP agencies under this section not be considered when determining commodity allocations to States for other eligible recipient agencies receiving commodities under this Act, or in following the priority for distribution of commodities to such agencies.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

33. COMMODITIES NOT INCOME

Present law

Specifies that commodities distributed under this Act not be considered income or resources for any purposes under Federal, State, or local law. [Sec. 206, EFAA]

House bill

Similar to present law, but narrower. Specifies that receipt of commodities cannot be considered in "determining eligibility for any Federal, State, or local "means-tested program," instead of the broader "any purposes" outlined in present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

34. PROHIBITION ON STATE CHARGES

Present law

Prohibits States from charging eligible recipient agencies any amount that exceeds the difference between the State's direct costs of storing and transporting commodities to recipient agencies and the amount of funds provided for this purpose by the Secretary. [Sec. 208, EFAA]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

35. DEFINITIONS

A. AVERAGE MONTHLY NUMBER OF UNEMPLOYED PERSONS

Present law

The average monthly number of unemployed persons within a State in the most recent fiscal year for which information is available, as determined by the Bureau of Labor Statistics of the Department of Labor. [Sec. 2143(b), EFAA]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the House bill with an amendment providing that all definitions included in the TEFAP and soup kitchen/food bank program will be included in the revised TEFAP.

B. ELDERLY PERSONS

Present law

No provision.

House bill

Defines "elderly persons" to mean persons 60 years or older.

Senate amendment

No provision.

Conference agreement

See Item 35A above.

C. ELIGIBLE RECIPIENT AGENCIES; EMERGENCY FEEDING ORGANIZATIONS

Present law

Combines definition of "eligible recipient agencies" and "emergency feeding organizations, as follows: "Eligible recipient agency" means public or non-profit organizations that administer activities or projects providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons (including those in charitable institutions, food banks, hunger centers, soup kitchens, and similar non-profit recipient agencies (hereinafter referred to as "emergency feeding organizations"); and school lunch, summer camps, and child nutrition meal service, elderly feeding programs, CSFP, charitable institutions for the needy, and disaster relief. [Sec. 201A, EFAA]

House bill

Similar to present law, but separates into two separate definitions, as follows: Defines "eligible recipient agency" to mean a public or non-profit organization that administers:

an institution operating a CSFP;

an emergency feeding organization (EFO);

a charitable institution (including a hospital and a retirement home, but excluding a penal institution) serving needy persons;

a summer camp for children or a child nutrition food service program;

an elderly feeding program; or

a disaster relief program.

Defines "emergency feeding organization" to mean public or private organizations that administer activities and projects (including charitable institutions, food banks and pantries, hunger relief centers, soup kitchens, or similar non-profit eligible agencies) providing nutrition assistance to relieve situations of emergency and distress by providing food to needy persons, including low-income and unemployed persons.

Senate amendment

No provision.

Conference agreement

See Item 35A above.

D. FOOD BANK

Present law

The term "food bank" means a public and charitable institution that maintains an established operation providing food to food pantries, soup kitchens, hunger relief centers, or other feeding centers that provide meals or food to feed needy persons on a regular basis as an integral part of their normal activity. [Sec. 110, Hunger Prevention Act of 1988]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

See Item 35A above.

E. FOOD PANTRY

Present law

Defines "food pantry" to mean a public or private nonprofit organization distributing food (including other than USDA food) to low-income and unemployed households to relieve situations of emergency and distress. [Sec. 110, Hunger Prevention Act of 1988]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

See Item 35A above.

F. NEEDY PERSONS

Present law

No provision.

House bill

Defines "needy persons" to mean individuals who have low incomes or are unemployed as determined by the State, as long as this is not higher than 185% of the poverty line; households certified as food stamp participants or individuals participating in other Federally-supported means-tested programs.

Senate amendment

No provision.

Conference agreement

See Item 35A above.

G. POVERTY LINE

Present law

The term "poverty line" is the same as the term used in Section 673(2) of the Community Services Block Grant Act (42 U.S.C.9902(2)). [Sec. 110, Hunger Prevention Act]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

See Item 35A above.

H. SOUP KITCHEN

Present law

The term "soup kitchen" means a public and charitable institution that, as an integral part of its normal activities, maintains an established feeding operation for needy homeless persons on a regular basis. [Sec. 110, Hunger Prevention Act]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

See Item 35A above.

36. REGULATIONS

Present law

Requires the Secretary to issue regulations within 30 days to implement this subtitle; to minimize to the extent practicable the regulatory, recordkeeping and paperwork requirements imposed on eligible recipient agencies, to publish in the Federal Register as early as feasible, but not later than the beginning of each fiscal year, an estimate of the types and quantities of commodities anticipated to be available; and to include in regulations provisions that set standards relating to liability for commodity losses when there is no evidence of negligence or fraud, and establish conditions for payment to cover such losses, taking into account the special needs and circumstances of the recipient agencies. [Sec. 210, EFAA]

House bill

Similar to present law except provides 120 days for Secretary to issue regulations and includes reference to “non-binding” nature of Secretary’s estimates of donations.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

37. FINALITY OF DETERMINATIONS

Present law

Specifies that determinations made by the Secretary concerning the types and quantities of commodities donated under this subtitle, when in conformance with applicable regulations, be final and conclusive and not reviewable by any other officer or agency of the Government. [Sec. 211, EFAA]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

38. PROHIBITION ON SALE OF COMMODITIES

Present law

Prohibits the sale or disposal of commodities in commercial channels in any form, except as permitted under Section 517 for in-kind payment of initial processing costs by the CCC. [Sec. 205(b), EFAA]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

39. SETTLEMENT OF CLAIMS

Present law

Gives the Secretary or designee authority to determine the amount of, settle and adjust any claim arising under this subtitle, and waive any claim when the Secretary determines it will serve the purposes of this Act. Specifies that nothing in this Act diminishes the authority of the Attorney General to conduct litigation on behalf of the United States. [Sec. 215, EFAA]

House bill

Same as present law.

Senate amendment

No provision.

Conference agreement

The Conference agreement follows the Senate amendment.

40. REPEALERS AND AMENDMENTS

Present law

No provision.

House bill

Repeals the Emergency Food Assistance Act of 1983.

In the Hunger Prevention Act of 1988, strikes Section 110 (soup kitchens and food banks); Subtitle C of Title II (Food processing and distribution); and Section 502 (food bank demonstration project).

Strikes Section 4 of the Commodity Distribution Reform Act of 1987 (Food bank demonstration).

Strikes Section 3 of the Charitable Assistance and Food Bank Act of 1987.

Amends the Food Security Act of 1985 by striking Section 1571, and striking Section 4 of the Agriculture and Consumer Protection Act (CSFP) and inserting Section 110 of the Commodity Distribution Act of 1995.

In the Agriculture and Consumer Protection Act of 1973: In Section 4(a) strikes "institutions (including hospitals and facilities caring for needy infants and children) supplemental feeding programs serving women, infants, and children, and elderly, or both, wherever located, disaster areas, summer camps for children" and inserting "disaster areas;" In subsection 4(c) strikes "the Emergency Food Assistance Act of 1983" and inserts "The Commodity Distribution Act of 1995"; and strikes Section 5.

In the Food Agriculture, Conservation, and Trade Act of 1990, strikes Section 1773(f).

Senate amendment

No provision.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of the Congressional Budget Act of 1974).

SUBTITLE K—MISCELLANEOUS

1. EXPENDITURE OF FEDERAL FUNDS IN ACCORDANCE WITH LAWS AND PROCEDURES APPLICABLE TO EXPENDITURE OF STATE FUNDS

Present law

According to the National Conference of State Legislatures, there currently are six States in which Federal funds go to the Governor rather than the State legislature. Those States are Arizona, Colorado, Connecticut, Delaware, New Mexico, and Oklahoma.

House bill

No provision.

Senate amendment

Stipulates that funds from certain Federal block grants to the States are to be expended in accordance with the laws and procedures applicable to the expenditure of the State's own resources (i.e., appropriated through the State legislature in all States). This provision applies to the following block grants: temporary assistance to needy families block grant under title I, the optional State food assistance block grant under title III, and the child care block grant under title VI of the Senate amendment. Thus, in the States in which the Governor previously had control over Federal funds, the State legislatures now would have control.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

2. ELIMINATION OF HOUSING ASSISTANCE WITH RESPECT TO FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS

Present law

No provision.

House bill

No provision.

Senate amendment

Ends eligibility for public housing and Section 8 housing assistance of a person who is fleeing to avoid prosecution after conviction for a crime, or attempt to commit a crime, that is a felony where committed (or, in the case of New Jersey, is a high misdemeanor), or who is violating a condition of probation or parole. The amendment states that the person's flight shall be cause for immediate termination of their housing aid.

Requires specified public housing agencies to furnish any Federal, State, or local law enforcement officer, upon the request of the officer, with the current address, social security number, and photograph (if applicable) of any SSI recipient, if the officer furnishes the public housing agency with the person's name and notifies the agency that the recipient is a fugitive felon (or in the case of New

Jersey a person fleeing because of a high misdemeanor) or a probation or parole violator or that the person has information that is necessary for the officer to conduct his official duties, and the location or apprehension of the recipient is within the officer's official duties.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

3. SENSE OF THE SENATE REGARDING ENTERPRISE ZONES

Present law

No specific provision. However, as stated, the provisions outlined in the Sense of the Senate language already can be done under present law.

House bill

No provision.

Senate amendment

Outlines findings related to urban centers and empowerment zones and includes sense of the Senate language that urges the 104th Congress to pass an enterprise zone bill that provides Federal tax incentives to increase the formation and expansion of small businesses and to promote commercial revitalization; allows localities to request waivers to accomplish the objectives of the enterprise zones; encourages resident management of public housing and home ownership of public housing; and authorizes pilot projects in designated enterprise zones to expand the educational opportunities for elementary and secondary school children.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

4. SENSE OF THE SENATE REGARDING THE INABILITY OF THE NON–CUSTODIAL PARENT TO PAY CHILD SUPPORT

Present law

No provision.

House bill

No provision.

Senate amendment

It is the Sense of the Senate that States should pursue child support payments under all circumstances even if the noncustodial parent is unemployed or his or her whereabouts are unknown; and that States are encouraged to pursue pilot programs in which the parents of a minor non-custodial parent who refuses or is unable to pay child support contribute to the child support owed.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

5. FOOD STAMP ELIGIBILITY

Present law

For purposes of determining eligibility and benefits under the Food Stamp program, the income—less a pro rata share—and financial resources of an ineligible alien are included in the income and resources of the household of which the alien is a member. [Sec. 6(f) of the Food Stamp Act]

House bill

No provision.

Senate amendment

Permits States to include all of an ineligible alien's income and resource in the income and resources of the household of which the alien is a member. (Note: This provision applies only to those aliens made ineligible under present food stamp law, not to those who might be made ineligible for food stamps under new provisions in the Senate amendment.)

Conference agreement

The conference agreement follows the Senate amendment.

6. SENSE OF THE SENATE ON LEGISLATIVE ACCOUNTABILITY FOR UNFUNDED MANDATES IN WELFARE REFORM LEGISLATION

Present law

P.L. 104–4, the Unfunded Mandates Reform Act of 1995, enacted March 22, 1995, responds to the concern of many State and local officials regarding costs placed upon them by "unfunded mandates." The Act addresses this issue by requiring the Congressional Budget Office (CBO) to estimate the costs to State, local, and tribal governments and the private sector of unfunded intergovernmental mandates that exceed a specified amount and to make the information available to the Congress before a final vote on a given piece of legislation is taken.

House bill

No provision.

Senate amendment

Includes the "purposes" section of P.L. 104–4 as findings and states that it is the Sense of the Senate that before the Senate acts on the conference agreement on H.R. 4 (or any other welfare reform legislation), CBO include in its 7-year estimates the costs to States of meeting all work requirements (and other requirements) in the conference agreement, including those for single-parent families, two-parent families, and those who have received cash assistance for 2 years; the resources available to the State to meet these work requirements and what States are projected to spend under current welfare law; and the amount of additional revenue needed by the States to meet the work requirements. In addition, the Senate would like CBO to estimate how many States would pay a penalty rather than raise the additional revenue needed to comply with the specified work requirements.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

7. SENSE OF THE SENATE REGARDING COMPETITIVE BIDDING FOR INFANT FORMULA

Present law

Under the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), States must carry out cost containment measures in procuring infant formula (and, where practicable, other foods). Cost containment must be by competitive bidding or another method that yields equal or greater savings. Any cost savings may be used by the State for WIC program purposes. [Sec. 17(b) and (h) of the Child Nutrition Act]

House bill

With respect to assistance provided to women, infants, and young children under the Family Nutrition Block Grant, States are required to establish and carry out a cost containment system for procuring infant formula. States must use cost containment savings for any of the activities supported under the Family Nutrition Block Grant and must report on their system and the estimated cost savings compared to the previous year.

Senate amendment

Includes findings on the success of the WIC program in: improving the health status of women, infants, and children, saving Medicaid expenditures, and establishing the importance of infant formula manufacture rebates in helping to fund the WIC program. The amendment states that it is the sense of the Senate that any legislation enacted by Congress must not eliminate or in any way weaken present competitive bidding requirements for the purchase of infant formula in programs supported with Federal funds.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

8. ESTABLISHING NATIONAL GOALS TO PREVENT TEENAGE PREGNANCIES

A. GOALS

Present law

No provision.

House bill

No provision.

Senate amendment

Requires the Secretary of HHS to establish and implement by January 1, 1997, a strategy for:

(1) preventing an additional 2% of out-of-wedlock teenage pregnancies a year; and

(2) assuring that at least 25% of U.S. communities have teenage pregnancy programs in place.

HHS is required to report to Congress by June 30, 1998, on progress made toward meeting these 2 goals.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

B. PREVENTION PROGRAMS

Present law

The Social Services block grant (SSBG) (sec. 2002 of SSA, 42 USC 1397a) entitles States to an allotment for services not limited to, but including: child day care; protective services for children and adults; services for children and adults in foster care; home management services; adult day care; transportation; family planning services; training and related services; employment services; information, referral and counseling; meal preparation and delivery; health support services; and, combinations of services to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, alcoholics, and drug addicts. Also, Title XX of the Public Health Service Act establishes the Adolescent Family Life (AFL) program to encourage adolescents to delay sexual activity and to provide services to alleviate the problems surrounding adolescent parenthood. One-third of all funding for AFL program services go to projects that provide "prevention services." The purpose of the prevention component is to find effective means within the context of the family of reaching adolescents, both male and female, before they become sexually active to maximize the guidance and support of parents and other family members in promoting abstinence from adolescent premarital sexual relations. (The fiscal year 1995 appropriation for AFL was $6.7 million.)

House bill

No provision.

Senate amendment

Amends the Social Services block grant (SSBG) (sec. 2002 of the Social Security Act) to require the Secretary to conduct a study of the relative effectiveness of different State programs to prevent out-of-wedlock and teenage pregnancies and to require States conducting programs under this provision to provide data required by the Secretary to evaluate these programs.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

9. SENSE OF THE SENATE REGARDING ENFORCEMENT OF STATUTORY RAPE LAWS

Present law

No provision.

House bill

No provision.

Senate amendment

Includes Sense of the Senate that States and local jurisdictions should aggressively enforce statutory rape laws.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

10. SANCTIONING FOR TESTING POSITIVE FOR CONTROLLED SUBSTANCES

Present law

Eligibility and benefit status for most of the Federal welfare programs are not affected by a recipient's use of illegal drugs. Even under the SSI program, as long as a recipient who is classified as a drug addict or alcoholic participates in an approved treatment plan when so directed and allows his or her treatment to be monitored, he or she is in compliance with the SSI rules, and in most cases the SSI benefit would continue without interruption.

House bill

No provision.

Senate amendment

Stipulates that States shall not be prohibited by the Federal Government from sanctioning welfare recipients who test positive for use of controlled substances.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

11. ABSTINENCE EDUCATION

Present law

The Maternal and Child Health (MCH) block grants (title V of the SSA, 42 USC 701) provides grants to States and insular areas to fund a broad range of preventive health and primary care activities to improve the health status of mothers and children, with a special emphasis on those with low income or with limited availability of health services. Sec. 502 includes a set-aside program for projects of national or regional significance. (The fiscal year 1995 appropriation for MCH was $684 million.) See also: Title XX of the Public Health Service Act establishes the Adolescent Family Life (AFL) program to encourage adolescents to delay sexual activity and to provide services to alleviate the problems surrounding adolescent parenthood. One-third of all funding for AFL program services go to projects that provide "prevention services." The purpose of the prevention component is to find effective means within the context of the family of reaching adolescents, both male and female, before they become sexually active to maximize the guidance and support of parents and other family members in promoting abstinence from adolescent premarital sexual relations. (The fiscal year 1995 appropriation for AFL was $6.7 million.)

House bill

No provision.

Senate amendment

Amends the Maternal and Child Health (MCH) block grants (title V of the SSA) to set aside $75 million to provide abstinence education—defined as an educational or motivational program that has abstaining from sexual activity as its exclusive purpose—and to provide at the option of the State mentoring, counseling and adult supervision to promote abstinence with a focus on those groups most likely to bear children out-of-wedlock. Also increases the authorization level of MCH to $761 million.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

12. SCORING

Present law

In 1985, Congress passed legislation aimed at bringing the Federal budget into balance by the early 1990's. That legislation, the Balanced Budget and Emergency Deficit Control Act of 1985, commonly referred to as Gramm-Rudman-Hollings Act after its primary sponsors, establishes a series of declining annual deficit targets and creates a process (known as sequestration) intended to insure that the deficit targets are adhered to even if Congress and the President fail to reduce the deficit sufficiently through legislative action. Under the sequestration process, across-the-board reductions in spending for many Federal programs are made automatically toward the start of the fiscal year if the deficit for that year is estimated to exceed the statutory target.

House bill

The House bill specifies that the discretionary spending limits in the Balanced Budget and Emergency Deficit Control Act of 1985 are to be adjusted each year based on actual appropriations compared to the level appropriated for fiscal year 1995. Thus, if appropriations equaled the authorized amounts, the discretionary spending limits would be increased by the difference between the authorization level under H.R. 4 and the 1995 appropriation. (Under the House bill AFDC-related child care expenditures would change from mandatory spending to discretionary spending.)

Senate amendment

No provision.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

13. PROVISIONS TO ENCOURAGE ELECTRONIC BENEFIT TRANSFER SYSTEMS

Present law

In 1978, Congress passed the Electronic Fund Transfer Act to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems and required the Federal Reserve Board to develop implementing regulations, which generally are referred to as Regulation E.

House bill

The House bill exempts from Regulation E requirements any electronic benefit transfer program (distributing needs-tested benefits) established under State or local law or administered by a State or local government.

Senate amendment

See Sec. 320 in Senate amendment, which exempts from Regulation E any food stamp electronic benefit transfers.

Conference agreement

This provision was dropped from the Reconciliation bill because it violates the Byrd Rule (section 313 of Congressional Budget Act of 1974).

13. SOCIAL SERVICES BLOCK GRANT

Present law

The Social Services Block Grant (Title XX) provides funds to States in order to provide a wide variety of social services, including:

(1) Child care;
(2) Family planning;
(3) Protective services for children and adults;
(4) Services for children and adults on foster care; and
(5) Employment services.

States have wide discretion over how they use Social Services Block Grant funds. States set their own eligibility requirements and are allowed to transfer up to 10 percent of their allotment to certain Federal health block grants, and for low-income home energy assistance (LIHEAP).

States can also use their block grant funds for staff training in the field of social services. This includes training at workshops, conferences, seminars, and educational institutions.

Funding for the Social Services Block Grant is capped at $2.8 billion a year. Funds are allocated among States according to the State's share of its total population. No State matching funds are required to receive Social Services Block Grant money.

House bill

No provision.

Senate amendment

Beginning in fiscal year 1997, the Social Services Block Grant will be reduced by 20 percent.

Conference agreement

The House recedes.

SUBTITLE L—REFORM OF THE EARNED INCOME CREDIT (SECS. 13701–13703 OF THE HOUSE BILL AND SECS. 7460–7466 OF THE SENATE AMENDMENT)

Present law

In general

Certain eligible low-income workers are entitled to claim a refundable credit on their income tax return. The amount of the credit an eligible individual may claim depends upon whether the individual has one, more than one, or no qualifying children and is determined by multiplying the credit rate by the individual's earned income up to an earned income threshold. The maximum amount of the credit is the product of the credit rate and the earned income threshold. For individuals with earned income (or adjusted gross income (AGI), if greater) in excess of the phaseout threshold, the maximum credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the phaseout threshold. For individuals with earned income (or AGI, if greater) in excess of the phaseout limit, no credit is allowed.

For taxable years beginning after December 31, 1995, an individual is not eligible for the credit if the aggregate amount of "disqualified income" of the individual for the taxable year exceeds $2,350. Disqualified income is the sum of:

(1) interest (taxable and tax-exempt),
(2) dividends, and
(3) net rent and royalty income (if greater than zero).

The parameters for the credit depend upon the number of qualifying children the individual claims. For 1996, the parameters are given in the following table (dollar amounts are projections expressed in 1996 dollars):

	Two or more qualifying children	One qualifying child	No qualifying children
Credit rate (percent)	40.00	34.00	7.65
Phaseout rate (percent)	21.06	15.98	7.65
Earned income threshold	$8,910	$6,340	$4,230
Maximum credit	3,564	2,156	324
Phaseout threshold	11,630	11,630	5,290
Phaseout limit	28,553	25,119	9,520

For years after 1996, the credit rates and the phaseout rates will be the same as in the preceding table. The earned income threshold and the phaseout threshold are indexed for inflation; because the phaseout limit depends on those amounts as well as the phaseout rate and the credit rate, the phaseout limit will also increase if there is inflation.

In order to claim the credit, an individual must either have a qualifying child or meet other requirements. A qualifying child must meet a relationship test, an age test, an identification test, and a residence test. In order to claim the credit without a qualifying child, an individual must not be a dependent and must be over age 24 and under age 65.

To satisfy the identification test, individuals must include on their tax return the name and age of each qualifying child. For returns filed with respect to tax year 1996, individuals must provide a taxpayer identification number (TIN) for all qualifying children born on or before November 30, 1996. For returns filed with respect to tax year 1997 and all subsequent years, individuals must provide TINs for all qualifying children, regardless of their age. An individual's TIN is generally that individual's social security number.

Mathematical errors

The IRS may summarily assess additional tax due as a result of a mathematical error without sending the taxpayer a notice of deficiency and giving the taxpayer an opportunity to petition the Tax Court. Where the IRS uses the summary assessment procedure for mathematical or clerical errors, the taxpayer must be given an explanation of the asserted error and a period of 60 days to request that the IRS abate its assessment. The IRS may not proceed to collect the amount of the assessment until the taxpayer has agreed to it or has allowed the 60-day period for objecting to expire. If the taxpayer files a request for abatement of the assessment specified in the notice, the IRS must abate the assessment. Any reassessment of the abated amount is subject to the ordinary deficiency procedures. The request for abatement of the assessment is the only procedure a taxpayer may use prior to paying the assessed amount in order to contest an assessment arising out of a mathematical or clerical error. Once the assessment is satisfied, however, the taxpayer may file a claim for refund if the taxpayer believes the assessment was made in error.

Return preparer penalties

An income tax return preparer is subject to a penalty of $250 if any part of an understatement of tax on a return or refund claim is due to the return preparer taking a position for which there was not a realistic possibility of the position being sustained. The return preparer must have known (or reasonably should have known) of the unrealistic position and not disclosed that position. In addition, an income tax return preparer is subject to a penalty of $1,000 if any part of an understatement of tax on a return or refund claim is due to the return preparer's willful attempt in any manner to understate tax or to the return preparer's negligent or intentional disregard of rules and regulations. An income tax return preparer is also subject to a penalty of $50 for each failure to (1) furnish a copy of a return or refund claim to the taxpayer, (2) sign the return or refund claim, (3) furnish his or her identifying number, (4) furnish certain copies or lists of returns or refund claims, or (5) file certain information returns regarding his or her employees. In addition, tax return preparers who endorse or negotiate checks made to taxpayers pay a penalty of $500 for each check endorsed or cashed.

House bill

Deny eligibility for individuals without qualifying children

In order to claim the credit, an individual must have a qualifying child.

Modify definition of adjusted gross income used for phasing out the credit

The House bill modifies the definition of AGI used for phasing out the credit by including the following items:

(1) Social Security benefits not subject to income tax, and

(2) nontaxable distributions from pensions, annuities, and individual retirement arrangements (but only if not rolled over into similar vehicles during the applicable rollover period).

Credit rate for individuals with two or more qualifying children

No provision.

Phaseout of the credit

The phaseout rate of the credit is increased to 23 percent for individuals with two or more qualifying children and to 18 percent for individuals with one qualifying child. With these changes, the parameters of the credit for 1996 will be as follows:

	Two or more qualifying children	One qualifying child
Credit rate (percent)	40.00	34.00
Phaseout rate (percent)	23.00	18.00
Earned income threshold	$8,910	$6,340
Maximum credit	3,564	2,156
Phaseout threshold	11,630	11,630
Phaseout limit	27,126	23,608

For years after 1996, the credit rates and the phaseout rates will be the same as in the preceding table. The dollar values will continue to be indexed, as under present law.

Expand definition of disqualified income

No provision.

Deny credit to individuals not authorized to be employed in the United States

Under the House bill, individuals are not eligible for the credit if they do not include their taxpayer identification number (and, if married, their spouse's taxpayer identification number) on their tax return. Solely for these purposes and for purposes of the present-law identification test for a qualifying child, a taxpayer identification number is defined as a social security number issued to an individual by the Social Security Administration other than a number issued under section 205(c)(2)(B)(i)(II) (or that portion of sec. 205(c)(2)(B)(i)(III) relating to it) of the Social Security Act (regarding the issuance of a number to an individual applying for or receiving Federally funded benefits).

Use mathematical error procedures for certain omissions

If an individual fails to provide a correct taxpayer identification number, such omission will be treated as a mathematical or clerical error. If an individual who claims the credit with respect to net earnings from self-employment fails to pay the proper amount of self-employment tax on such net earnings, the failure will be treated as a mathematical or clerical error.

Increase return preparer penalties

No provision.

Effective date

The provision is effective for taxable years beginning after December 31, 1995.

Senate amendment

Deny eligibility for individuals without qualifying children

The Senate amendment is the same as the House bill.

Modify definition of adjusted gross income used for phasing out the credit

The Senate amendment modifies the definition of AGI used for phasing out the credit by including certain nontaxable income and by disregarding certain losses. The nontaxable items included are:

(1) tax-exempt interest,

(2) Social Security benefits not subject to income tax,

(3) nontaxable distributions from pensions, annuities, and individual retirement arrangements (but only if not rolled over into similar vehicles during the applicable rollover period), and

(4) child support payments received pursuant to a divorce or separation instrument, but only in excess of $6,000.

The losses disregarded are:

(1) net capital losses (if greater than zero),

(2) net losses from sole proprietorships (other than in farming),

(3) net losses from sole proprietorships in farming,

(4) net losses from other trades and businesses,
(5) net losses from nonbusiness rents and royalties,
(6) net losses from trusts and estates, and
(7) net operating losses.

Credit rate for individuals with two or more qualifying children

The increase in the credit rate for individuals with two or more qualifying children that was supposed to take effect for 1996 is repealed. Thus, for 1996 and following years the credit rate for individuals with two or more qualifying children is 36 percent.

Phaseout of the credit

The Senate amendment changes the method of phasing out the credit. Rather than specifying a phaseout rate (which, given a maximum credit that is indexed for inflation, results in a phaseout range that increases with inflation), the size of the phaseout range is fixed in nominal dollars. The maximum amount of credit that may be claimed by an individual is reduced by a certain percentage for each $100 (or portion thereof) by which the individual's earned income (or modified AGI, if greater) exceeds the applicable phaseout threshold. For individuals with one qualifying child, the applicable percentage is 0.86 percent, meaning that the credit is phased out over a $11,600 range. For individuals with two or more qualifying children, the applicable percentage is 0.66 percent, meaning that the credit is phased out over a $15,100 range. The size of these phaseout ranges is not indexed for inflation, although the phaseout thresholds continue to be indexed for inflation.

With these changes, the parameters of the credit for 1996 are as follows:

	Two or more qualifying children	One qualifying child
Credit rate (percent)	36	34
Earned income threshold	$8,910	$6,340
Maximum credit	3,208	2,156
Phaseout threshold	11,630	11,630
Phaseout limit	26,730	23,230

For years after 1996, the credit rates will be the same as in the preceding table. The dollar values for the earned income threshold and the phaseout threshold will continue to be indexed, as under present law. The phaseout limit will always be $15,100 greater than the phaseout threshold for individuals with two or more qualifying children and will always be $11,600 greater than the phaseout threshold for individuals with one qualifying child.

Expand definition of disqualified income

For purposes of the disqualified income test for taxable years beginning after December 31, 1995, the following items would be added to the definition of disqualified income: net capital gain income (if greater than zero) and net passive income (if greater than zero).

Deny credit to individuals not authorized to be employed in the United States

The Senate amendment is the same as the House bill.

Use mathematical error procedures for certain omissions

The Senate amendment is the same as the House bill.

Increase return preparer penalties

The Senate amendment doubles the civil penalties applicable to income tax return preparers. Also, the Secretary of the Treasury is encouraged to use the maximum feasible review process to insure that originators of electronic income tax returns involving the credit comply with the law.

Effective date

The effective date is the same as the House bill.

Conference agreement

Deny eligibility for individuals without qualifying children

The conference agreement follows the House bill and the Senate amendment.

Modify definition of adjusted gross income used for phasing out the credit

The conference agreement follows the Senate amendment.

Credit rate for individuals with two or more qualifying children

The conference agreement provides that the credit rate for individuals with two or more qualifying children is maintained at 36 percent for 1996 and future years. The base to which this rate is applied, however, is changed for some individuals. In general, the maximum amount of the credit an eligible individual with two or more qualifying children may claim is determined by multiplying an enhancement factor times the credit rate times the individual's earned income up to the earned income threshold.

For married couples filing joint returns for whom earned income (or modified AGI, if greater) is less than or equal to $17,000, the enhancement factor is 10/9ths. For married couples filing joint returns for whom earned income (or modified AGI, if greater) is greater than $21,000, the enhancement factor is 1. For married couples filing joint returns for whom earned income (or modified AGI, if greater) is greater than $17,000 but less than or equal to $21,000, the enhancement factor is ratably reduced from 10/9ths to 1. For example, a married couple filing a joint return with an earned income (and modified AGI) of $18,000 has an income one-fourth [= ($18,000 − $17,000)/($21,000 − $17,000)] of the way into the ratable reduction. Thus, the enhancement factor for this couple is 13/12ths [= (10/9) − (1/4)((10/9) − 1)]. The $17,000 and $21,000 amounts are indexed for inflation after 1996.

For unmarried individuals for whom earned income (or modified AGI, if greater) is less than or equal to $14,000, the enhancement factor is 10/9ths. For unmarried individuals for whom earned income (or modified AGI, if greater) is greater than $18,000, the enhancement factor is 1. For unmarried individuals for whom earned income (or modified AGI, if greater) is greater than $14,000 but less than or equal to $18,000, the enhancement factor is ratably reduced from 10/9ths to 1. For example, an unmarried individual with an earned income (and modified AGI) of $16,500 has an income five-eighths [= ($16,500 − $14,000)/($18,000 − $14,000)] of the way into the ratable reduction. Thus, the enhancement factor for this individual is 25/24ths [= (10/9) − (5/8)((10/9) − 1)]. The $14,000 and $18,000 amounts are indexed for inflation after 1996.

The conferees do not intend that individuals will have to do the above calculations to determine enhancement factors; these rules will be reflected in the credit tables provided with the tax return materials.

Phaseout of the credit

The conference agreement increases the phaseout rate of the credit for individuals with earned income (or modified AGI, if greater) in excess of a second-tier phaseout threshold. For individuals with two or more qualifying children, the second-tier phaseout threshold is $17,750 and the phaseout rate for income in excess of that threshold is 25 percent. For individuals with one qualifying child, the second-tier phaseout threshold is $14,850 and the phaseout rate for income in excess of that threshold is 20 percent. These second-tier phaseout threshold are indexed for inflation after 1996. The phaseout rate applied to income between the present-law phaseout threshold and the new, second-tier phaseout threshold is the same as would apply under present law for 1996 and future years. With these changes, the parameters of the credit for 1996 will be as follows:

	Two or more qualifying children	One qualifying child
Credit rate (percent)[1]	36.00	34.00
Earned income threshold	$8,910	$6,340
Maximum credit	$3,564	$2,156
First-tier phaseout threshold	$11,630	$11,630
First-tier phaseout rate (percent)	21.06	15.98
Second-tier phaseout threshold	$17,750	$14,850
Second-tier phaseout rate (percent)	25.00	20.00
Phaseout limit	$25,425	$23,055

[1] Subject to enhancement factor for individuals with two or more qualifying children.

For years after 1996, the credit rates and the phaseout rates will be the same as in the preceding table. The dollar values will continue to be indexed, as under present law.

Expand definition of disqualified income

The conference agreement follows the Senate amendment, except that net capital gain income would not be added to the definition of disqualified income.

Deny credit to individuals not authorized to be employed in the United States

The conference agreement follows the House bill and the Senate amendment.

Use mathematical error procedures for certain omissions

The conference agreement follows the House bill and the Senate amendment.

Increase return preparer penalties

The conference agreement doubles the civil penalties applicable to income tax return preparers. The conferees encourage the Secretary of the Treasury to use the maximum feasible review process to insure that originators of electronic income tax returns involving the credit comply with the law.

Effective date

The conference agreement follows the House bill and the Senate amendment.

MISCELLANEOUS PROVISIONS

FOREIGN AFFAIRS AND RELATED PROVISIONS

FOREIGN AFFAIRS AGENCIES CONSOLIDATION

House bill

Section 6002 of the House bill would have enacted into law division A of H.R. 1561, the Foreign Affairs Agencies Consolidation Act of 1995. The Act reforms the foreign affairs institutions that have grown up over the last forty years and adapts them to the requirements of the post-Cold Ware era.

Senate amendment

The Senate amendment contained no comparable provision.

Conference agreement

The conferences concluded that the application of the Byrd Rule (section 313 of the Congressional Budget Act) against the relevant provision of the House bill could not be avoided if reported as part of the conference agreement and, accordingly, agreed to omit the provision from the conference agreement.

CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1995

House bill

The House bill would have enacted legislation identical to H.R. 927, as passed by the House of Representatives. H.R. 927 would reaffirm the U.S. policy continuing the economic and political isolation of the Castro regime and would protect the property interests of U.S. citizens whose property was confiscated by that regime. The bill would also have required immediate planning for U.S. support for a democratic transition in Cuba.

Senate amendment

Senate amendment contained no comparable provision.

Conference agreement

The conferences concluded that the application of the Byrd Rule (section 313 of the Congressional Budget Act) against the relevant provision of the House bill could not be avoided if reported as part of the conference agreement and, accordingly, agreed to omit the provision from the conference agreement.

LEASE-PURCHASE

House bill

The House bill contained no comparable provision.

Senate amendment

The Senate amendment would authorize the Department of State to acquire housing and other facilities overseas through lease-purchase arrangements. Authority is granted only within appropriated amounts and upon certification that the arrangement will result in less cost than direct purchase or construction.

Conference agreement

The conferences concluded that this provision would likely be subject to the application of the Byrd Rule (section 313 of the Congressional Budget Act) and, accordingly, agreed to omit the provision from the conference agreement.

BUDGET ENFORCEMENT

DISCRETIONARY SPENDING LIMITS

House bill

Reduces the discretionary spending limits from current law levels for fiscal years 1996, 1997, and 1998. Extends spending limits through fiscal year 2002. Further reduces spending limits by $12 billion for 1997-2002 levels in budget resolution conference report.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

CRIME TRUST FUND SPENDING LEVELS

House bill

Reduces spending limits for programs authorized by last year's crime bill, P.L. 103-322, in fiscal years 1996, 1997, 1998. The bill also extends enforcement of the spending limit on these programs through fiscal year 2000.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

SPECIAL ADJUSTMENT

House bill

Eliminates special adjustment in the discretionary spending limits for changes in inflation.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

PAYGO EXTENSION

House bill

Permanently extends PAY-AS-YOU-GO requirements for entitlement and legislation. Specifies that PAYGO requirements for any bill extend for four years after the date of enactment.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

DISCRETIONARY SPENDING ADJUSTMENT FOR H.R. 4

House bill

Provides adjustment in the discretionary spending limits to accommodate funding for two categorical grants that would be subject to appropriations in the House-passed welfare reform bill, H.R. 4, but were previously funded as entitlement (outside the discretionary spending limits). Adjustment provides the Appropriations Committee with the necessary resources to fund the program while guaranteeing that the funds will actually be used for the specified welfare programs.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

CHAMPUS SEQUESTRATION EXEMPTION

House bill

Allows President to effectively exempt from sequestration personnel accounts used to fund CHAMPUS (the account would be subject to sequestration, but could be replenished with funds from other DoD accounts).

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

SEQUESTRATION OF DOD ACCOUNTS

House bill

Specifies that any sequester effecting DoD accounts be across the accounts identified in the DoD appropriations bill.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

DIRECT STUDENT LOAN SCORING

House bill

Puts direct student loans and loan guarantees on an equivalent budgetary basis by stipulating that the administrative costs of direct student loan must be included in the cost estimates used to enforce PAYGO and the discretionary spending limits.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

RELATIONSHIP OF DISCRETIONARY SPENDING AND PAYGO

House bill

Provides that in the 104th Congress any reduction in the discretionary spending limits shall be treated as a reduction in the deficit under PAYGO procedures. Effectively allows the revenue loss from tax cuts to be offset, in part, by a reduction in discretionary spending.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to Senate. Language would violate the Byrd Rule.

MEDICARE SAVINGS PRECLUDED FROM PAYGO

House bill

Provides that none of the savings from Medicare reforms can be counted for PAYGO purposes. Effectively precludes using the deficit reduction resulting from Medicare changes to offset the revenue loss from the tax cuts.

Senate amendment

There is no comparable provision in the Senate amendment.

Conference agreement

House recedes to the Senate. Language would violate the Byrd Rule.

GENERATIONAL ACCOUNTING

House bill

There is no comparable provision in the House bill.

Senate amendment

Requires the President's Budget to include an analysis of the generational accounting consequences of the budget.

Conference agreement

Senate recedes to the House. Language would violate the Byrd Rule.

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

JOHN R. KASICH,
ROBERT S. WALKER,
DICK ARMEY,
TOM DELAY,
JOHN BOEHNER,

As additional conferees from the Committee on the Budget, for consideration of title XX of the House bill, and modifications committed to conference:

JIM KOLBE,
CHRISTOPHER SHAYS,
DAVE HOBSON,

As additional conferees from the Committee on Agriculture, for consideration of title I of the House bill, and subtitles A–C of title I of the Senate amendment, and modifications committed to conference:

PAT ROBERTS,
BILL EMERSON,

As additional conferees from the Committee on Banking and Financial Services, for consideration of title II of the House bill, and title III of the Senate amendment, and modifications committed to conference:

JAMES A. LEACH,
BILL MCCOLLUM,
MARGE ROUKEMA,

As additional conferees from the Committee on Commerce, for consideration of title III of the House bill, and subtitle A of title IV, subtitles A and G of title V, and section 6004 of the Senate amendment, and modifications committed to conference:

TOM BLILEY,
DAN SCHAEFER,

As additional conferees from the Committee on Commerce, for consideration of title XV of the House bill, and subtitle A of title VII of the Senate amendment, and modifications committed to conference:

TOM BLILEY,
MICHAEL BILIRAKIS,
J. DENNIS HASTERT,
JAMES GREENWOOD,

As additional conferees from the Committee on Commerce, for consideration of title XVI of the House bill, and subtitle B of title VII of the Senate amendment, and modifications committed to conference:

TOM BLILEY,
MICHAEL BILIRAKIS,
BILLY TAUZIN,
JOE BARTON,
BILL PAXON,
J. DENNIS HASTERT,
JAMES GREENWOOD,
RALPH M. HALL,

As additional conferees from the Committee on Economic and Educational Opportunities, for consideration of title IV of the House bill, and title X of the Senate amendment, and modifications committed to conference:

WILLIAM F. GOODLING,
BUCK MCKEON,

As additional conferees from the Committee on Government Reform and Oversight, for consideration of title V of the House bill, and title VIII and sections 13001 and 13003 of the Senate amendment, and modifications committed to conference:

BILL CLINGER,
STEVEN SCHIFF,

As additional conferees from the Committee on International Relations, for consideration of title VI of the House bill, and section 13002 of the Senate amendment, and modifications committed to conference:

BEN GILMAN,
DAN BURTON,

As additional conferees from the Committee on the Judiciary, for consideration of title VII of the House bill, and title IX and section 12944 of the Senate amendment, and modifications committed to conference:

HENRY HYDE,

CARLOS J. MOORHEAD,

As additional conferees from the Committee on National Security, for consideration of title VIII of the House bill, and title II of the Senate amendment, and modifications committed to conference:

FLOYD SPENCE,
DUNCAN HUNTER,

As additional conferees from the Committee on Resources, for consideration of title IX of the House bill, and title V (except subtitles A and G) of the Senate amendment, and modifications committed to conference:

DON YOUNG,
BILLY TAUZIN,

As additional conferees from the Committee on Transportation and Infrastructure, for consideration of title X of the House bill, and subtitles B and C of title IV and title VI (except section 6004) of the Senate amendment, and modifications committed to conference:

BUD SHUSTER,
BILL CLINGER,

As additional conferees from the Committee on Veterans' Affairs, for consideration of title XI of the House bill, and title XI of the Senate amendment, and modifications committed to conference:

ROBERT STUMP,
TIM HUTCHINSON,
G.V. MONTGOMERY,

As additional conferees from the Committee on Ways and Means, for consideration of titles XII, XIII, XIV, and XIX of the House bill, and subtitles H and I of title VII and title XII (except section 12944) of the Senate amendment, and modifications committed to conference:

BILL ARCHER,
PHIL CRANE,
WM. THOMAS,
E. CLAY SHAW, Jr.,
JIM BUNNING,

As additional conferees from the Committee on Ways and Means, for consideration of title XV of the House bill, and subtitle A of title VII of the Senate amendment, and modifications committed to conference:

BILL ARCHER,
WM. THOMAS,
NANCY L. JOHNSON,
JIM MCCRERY,
Managers on the Part of the House.

From the Committee on the Budget for consideration of all titles:

PETE V. DOMENICI,
CHUCK GRASSLEY,

From the Committee on Agriculture, Nutrition, and Forestry:

DICK LUGAR

(for consideration of all of title I),

BOB DOLE

(for consideration of all of title I),

JESSE HELMS

(for consideration of section 113 and subtitle D),

THAD COCHRAN

(for consideration of title I, except sections 1106, 1108, 1113, and subtitle D),

LARRY E. CRAIG

(for consideration of sections 1106 and 1108),

From the Committee on Armed Services:

STROM THURMOND,

JOHN MCCAIN,

From the Committee on Banking, Housing and Urban Affairs:

ALFONSE M. D'AMATO,

PHIL GRAMM,

From the Committee on Commerce, Science, and Transportation:

LARRY PRESSLER,

TED STEVENS,

JOHN MCCAIN,

From the Committee on Energy and Natural Resources:

FRANK H. MURKOWSKI,

MARK O. HATFIELD,

DON NICKLES,

From the Committee on Environment and Public Works:

JOHN H. CHAFEE,

JOHN WARNER,

BOB SMITH,

From the Committee on Finance:

WILLIAM V. ROTH, Jr.,

BOB DOLE,

From the Committee on Governmental Affairs (and for consideration of the title of the House bill relating solely to abolishing the Department of Commerce):

TED STEVENS,

FRED THOMPSON,

From the Committee on the Judiciary:

ORRIN HATCH,

CHUCK GRASSLEY,

From the Committee on Labor and Human Resources:

NANCY LANDON KASSEBAUM,

DAN COATS,

BILL FRIST,

From the Committee on Veterans Affairs:

ALAN K. SIMPSON,

FRANK H. MURKOWSKI,

Managers on the Part of the Senate.